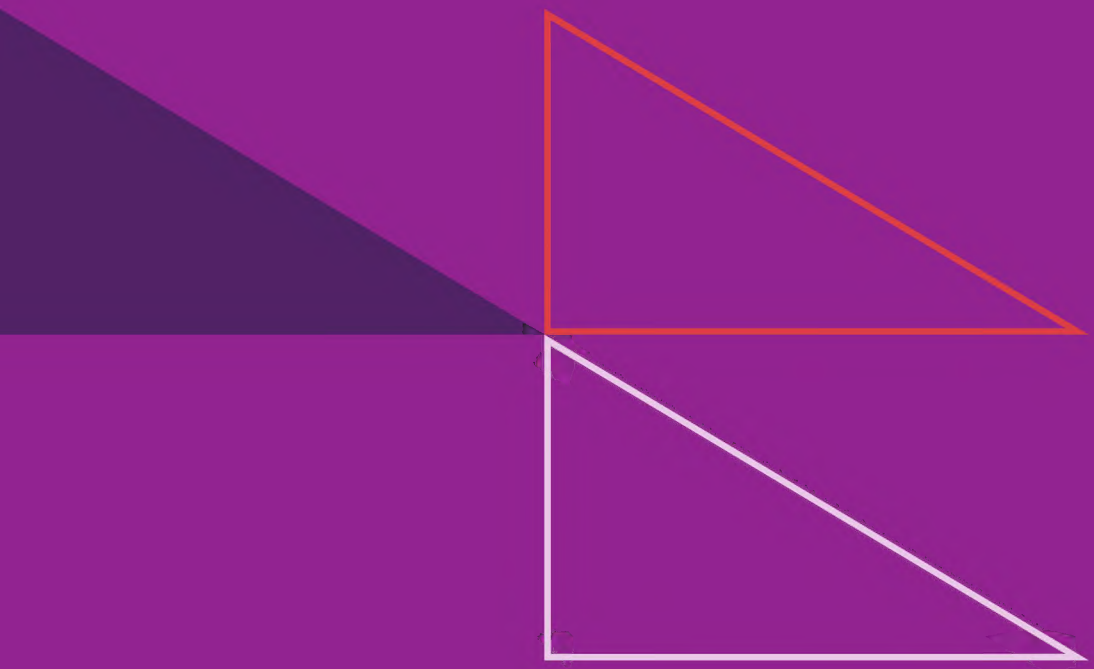
INVESTIGATION



Operation Richmond

August 2026

Special report

ibac | Strengthening Victoria's Integrity

Acknowledgement

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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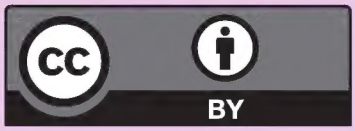

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Letter of Transmittal

To
The Honourable President of the Legislative Council

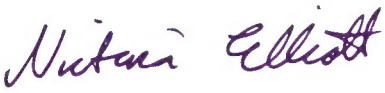
and
The Honourable Speaker of the Legislative Assembly

Special report on Operation Richmond

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's special report on Operation Richmond.

IBAC's findings and recommendations are contained in this report.

Yours sincerely



Victoria Elliott
Commissioner
Independent Broad-based Anti-corruption Commission

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Commissioner foreword

This special report sets out the findings of IBAC's Operation Richmond, an investigation into allegations of corrupt conduct relating to the negotiation of enterprise bargaining agreements (EBAs) for the Country Fire Authority (CFA) and Metropolitan Fire Brigade (MFB) between 2016 and 2019 and the establishment of Fire Rescue Victoria (FRV) in 2019.

This report details how deficiencies in behaviours, systems, policies and controls, could enable, facilitate or result in corrupt conduct and highlights where reform must be made to minimise the risk of corrupt conduct occurring in the future.

While IBAC did not find corrupt conduct (as defined in the *Independent Broad-based Anti-corruption Commission Act 2011*), IBAC found serious and concerning conduct by senior public officers, including ministers, members of Parliament and public servants, relating to the negotiation of the CFA EBA, the MFB EBA, and the establishment of FRV, which increased the risk of corrupt conduct.

IBAC found that senior members of government acted contrary to established policies, procedures, codes of conduct and conventions in negotiating a deal with the Secretary of the United Firefighters Union, Mr Peter Marshall, for the CFA EBA without the knowledge and involvement of the responsible minister, agencies and departments. By doing so, the government placed itself in a position where Mr Marshall was able to exert extraordinary influence over the negotiations for both the CFA EBA and the MFB EBA.

During the period investigated, IBAC also found that Mr Marshall was afforded privileged access to senior members of government which, in many cases, were not disclosed and were to the exclusion of other key stakeholders.

While access to decision makers is a fundamental aspect of our democratic system, privileged and unchecked access can increase the risk of corrupt conduct through improper influence and direct government decision making away from the public interest.

Operation Richmond highlights how government leaders, including ministers and the Premier, can undermine established checks and balances when they fail to model high integrity standards and act as stewards of good governance.

IBAC has included a range of evidence obtained during its investigation, including witness testimony, in this report. As part of this investigation, witnesses were examined in private. IBAC conducts most of its examinations in private unless the criteria set down in the IBAC Act for holding public examinations are met. Public examinations can only be conducted when IBAC considers on reasonable grounds that each of the following factors have been met: the conduct that is the subject of the investigation may constitute serious or systemic corrupt conduct; there are exceptional circumstances; it is in the public interest; and it won't cause unreasonable damage to a person's reputation, safety or wellbeing.

In the case of Operation Richmond, the criteria for holding public examinations had not been met.

A significant amount of work on this investigation occurred before I commenced as IBAC Commissioner in December 2023. I would like to recognise the work and commitment of IBAC's former Commissioner, Robert Redlich AM KC, and past and current IBAC officers who worked on this investigation. Since commencing as IBAC Commissioner, I have reviewed the evidentiary material and the responses from affected people and organisations to a draft version of this report and have decided to make the findings and recommendations presented in this report in line with IBAC's core functions to identify, investigate, expose and prevent public sector corruption.

Public reporting is a critical function for all integrity agencies, offering transparency and assurance to the community and public sector that corruption allegations are appropriately dealt with, while serving as a powerful mechanism of deterrence. This includes publishing a special report about an investigation into suspected 'corrupt conduct'.

Regrettably, the special report process for Operation Richmond has been lengthy and complex. There were several factors that impacted the investigation and the publication of this special report. Most recently, publication of this report was delayed due to well publicised court proceedings against IBAC. In addition, the pandemic, other IBAC court matters that influenced how this report was drafted and operational factors within IBAC also contributed to the delay of this report.

I recognise the impact the delay in releasing this report has had on all those involved. IBAC takes its responsibility to support and protect the wellbeing of witnesses during their involvement in an investigation seriously. This includes in the lead up to and after the publication of a special report.

Importantly, we have reviewed many of our internal processes and made improvements to ensure that what is within our control is completed as efficiently as possible for future IBAC investigations and special reports. IBAC is committed to ensuring it fulfils its statutory functions to identify, investigate, expose and prevent public sector corruption and police misconduct in a timely manner that is of most benefit to the Victorian community.

The matters investigated in Operation Richmond may have occurred some time ago, but the corruption risks and vulnerabilities highlighted – improper influence, failures in ministerial conduct, failures by senior public servants to act impartially and the politicisation of appointment processes for public sector boards – are serious and persist in Victoria's public sector.

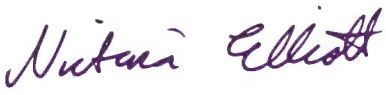
In recent years, IBAC has made a number of substantial recommendations to the government to strengthen the regulation of lobbying activity, including by employee and employer associations such as unions, and address the risk of improper influence. This includes in IBAC's 2022 *Special report on corruption risks associated with donations and lobbying* and in IBAC's 2023 *Operation Daintree special report*.

While the government has provided in-principle support for these recommendations, legislative reforms have yet to be introduced.

Ministers play a critical role in shaping the ethical culture of government, which sets the tone and standard for all public officers. As a result of Operation Richmond, IBAC is making three recommendations to address key risks identified during the investigation that relate to the conduct of ministers, which increased the likelihood of and their vulnerability to corrupt conduct in the form of improper influence.

This includes two recommendations to the Premier to formalise and embed integrity standards for ministers, and promote clarity and accountability regarding the application of constitutional conventions. IBAC is also making one recommendation to the Secretary of the Department of Premier and Cabinet to strengthen awareness and understanding of ministerial obligations.

Operation Richmond highlights the need for the government to take decisive action to embed strong standards of conduct across the government. Embedding a robust integrity culture anchored by strong, ethical leadership, is perhaps one of the strongest safeguards against corruption.



Victoria Elliott
Commissioner
Independent Broad-based Anti-corruption Commission

Glossary

Acronyms and initialisms

Term	Explanation
CEO	Chief Executive Officer
CFA	Country Fire Authority
DJCS	Department of Justice and Community Safety
DJR	Department of Justice and Regulation
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
EBA	Enterprise Bargaining Agreement
EMV	Emergency Management Victoria
ERSC	Expenditure Review Sub-Committee of Cabinet
FRV	Fire Rescue Victoria
FSLAR Bill 2017	Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017
FSLAR Bill 2019	Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019
FW Act	*Fair Work Act 2009* (Cth)
FWC	Fair Work Commission
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	*Independent Broad-based Anti-corruption Commission Act 2011* (Vic)
IRV	Industrial Relations Victoria
MFB	Metropolitan Fire and Emergency Services Board, also known as the Metropolitan Fire Brigade
MP	Member of Parliament
PA Act	*Public Administration Act 2004* (Vic)
PIA	Parliamentary Integrity Adviser
PPO	Premier's Private Office

Term	Explanation
PSIRP	Public Sector Industrial Relations Policies
PWSI Commission	Parliamentary Workplace Standards and Integrity Commission
UFU or the union	United Firefighters Union – Victorian Branch
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VO	Victorian Ombudsman
VPS	Victorian Public Service

Key terms

Term	Explanation
Public body	Public body is defined in section 6 of the IBAC Act and includes (among others) public service bodies (such as departments and administrative offices), public entities (such as the CFA and FRV) and special bodies (such as the PWSI Commission).
Public officer	Public officer is defined in section 6 of the IBAC Act and includes all public sector employees and other persons under IBAC's jurisdiction. This includes members of the Victorian Government, including the Premier, ministers and parliamentary secretaries, public servants, including department secretaries and executives, and statutory office holders, including board appointees.
Public Sector Code of Conduct	Code of Conduct for Victorian Public Sector Employees issued by the Victorian Public Sector Commissioner
Public sector employee	People employed by a public service body, a public entity or a special body.
Public servant, or public service employee	People employed under Part 3 of the PA Act, such as employees of departments and administrative offices.
The Values	Public Sector Values

Naming of people and bodies

This report contains adverse comments or opinions about a number of persons who are named or otherwise identifiable. 'Persons' is defined in the IBAC Act to include individuals and unincorporated associations, firms and partnerships. This includes unions.

IBAC notes that not all the adverse comments or opinions in this report represent IBAC's views. Several of the adverse comments or opinions in this report are the opinions or comments of witnesses involved in Operation Richmond whose evidence is included in this report.

Separately, IBAC makes adverse findings about some public bodies. The term 'public bodies' is defined in the IBAC Act and includes (among others) public service bodies (such as departments and administrative offices) and public entities (including statutory authorities).

This report also includes information (such as job titles) that may identify other individuals. IBAC notes that the following individuals, who may be identifiable, are not the subject or intended subject of any adverse comment or opinion:

Name or title
CEO of the CFA (Nov 2015–Jun 2016)
Commissioner of the FWC (2010–17)
Minister Garrett's advisors
Ministerial advisor
PPO advisor B
PPO advisor C
President of the FWC (Mar 2012–Nov 2022)
Senator B
Treasury official

This report includes comments in relation to a crossbench MP and their relative. IBAC does not purport to impeach, question or otherwise examine the conduct of the crossbench MP as it related to their conduct as a member of the Legislative Council. IBAC also does not make or imply any adverse comment regarding the crossbench MP's relative.

For more information on the naming of persons and public bodies in this report and IBAC's natural justice obligations under section 162 of the IBAC Act, see Appendix A.

People and bodies in this report

Government departments and agencies

Department of Premier and Cabinet

The Department of Premier and Cabinet (DPC) is responsible for supporting the Premier and Cabinet and whole-of-government coordination.

Name or title	Role during period investigated
Members of Parliament	
The Hon Daniel Andrews MP	Premier of Victoria (Dec 2014–Sep 2023) Leader of the Victorian Labor Party (Dec 2014–Sep 2023)
The Hon Gavin Jennings MLC	Special Minister of State (Dec 2014–Mar 2020)
Minister Jennings' Parliamentary Secretary	Parliamentary Secretary to the Special Minister of State (Dec 2014–Dec 2018)
Public servants	
Mr Chris Eccles AO	Secretary of DPC (Dec 2014–Oct 2020)
Mr Tony Bates PSM	Deputy Secretary of Governance Policy and Coordination at DPC (Mar 2016–Apr 2018)

Industrial Relations Victoria

Industrial Relations Victoria (IRV) is Victoria's lead agency for developing industrial relations policy and initiatives. IRV was a part of the Department of Economic Development, Jobs, Transport and Resources before moving to DPC in January 2019, as part of 'machinery of government' changes. IRV oversees enterprise bargaining across the public sector, including by having stewardship of the industrial relations policies and assisting parties involved in bargaining to find workable solutions and avoid disputes.

Department of Treasury and Finance

The Department of Treasury and Finance (DTF) provides economic, financial and resource management advice to the government. During enterprise bargaining, DTF is responsible for assisting departments and agencies to understand and apply wages policy, cost service delivery improvements and other enterprise bargaining costs and benefits. DTF is also responsible for advising the government on department and agency compliance with wages policy.

Name or title	Role during period investigated
The Hon Tim Pallas MP	Treasurer (Dec 2014–Dec 2024) Minister for Industrial Relations (Dec 2018–Dec 2024). The Treasurer was supported by DPC for this portfolio.

Department of Justice and Regulation

From January 2015 to December 2018, the Department of Justice and Regulation (DJR) led the delivery of justice and community safety services in Victoria. The department has been renamed and is now called the Department of Justice and Community Safety (DJCS). During the relevant timeframe the department serviced several ministers, including the Minister for Emergency Services. Emergency Management Victoria, the Country Fire Authority and the Metropolitan Fire Brigade (superseded by Fire Rescue Victoria) are portfolio agencies of the department.

Name or title	Role during period investigated
Members of Parliament	
The Hon Jane Garrett MLC	Minister for Emergency Services (Dec 2014–Jun 2016)
The Hon James Merlino MP	Minister for Emergency Services (Jun 2016–Nov 2018)
The Hon Lisa Neville MP	Minister for Police and Emergency Services (Dec 2018–Aug 2021)
Public servants	
Secretary of DJR	Secretary of DJR (2013–18)

Emergency Management Victoria

Emergency Management Victoria (EMV) is a statutory authority in the justice portfolio. It was established in 2014 and plays a key role in implementing the government's emergency management agenda.

Name or title	Role during period investigated
Emergency Management Commissioner	Emergency Management Commissioner (Jul 2014–Aug 2018)

The Victorian fire services

Country Fire Authority

The Country Fire Authority (CFA) is a volunteer-based fire service responsible for fire suppression, rescues and response to other hazards across Victoria.

Name or title	Role during period investigated
CFA Chief Executive Officer (CEO)	CEO of the CFA (Nov 2015–Jun 2016)

Metropolitan Fire and Emergency Services Board

The Metropolitan Fire and Emergency Services Board, also known as the Metropolitan Fire Brigade or the MFB, was a statutory authority responsible for fire suppression and rescue services in metropolitan Melbourne. From 1 July 2020, the functions of the MFB were assumed by Fire Rescue Victoria.

Name or title	Role during period investigated
Board President	President of the MFB Board (May 2015–Jan 2018)
Board member A	MFB Board member (Jun 2017–Jun 2020) MFB Deputy Board President (Mar 2018–Feb 2018) MFB Board President (Feb 2018–Jun 2020)
Board member B	MFB Board member (Jan 2018–June 2020)
Mr Greg Sword AM	MFB Board member (Mar 2018–June 2020) (see also Fire Rescue Victoria)
MFB CEO A (2014–17)	The CEO for the MFB (Apr 2014–Jul 2017)
MFB CEO B (2018–19)	The CEO for the MFB (May 2018–Jul 2019)

Fire Rescue Victoria

Fire Rescue Victoria (FRV) was formed on 1 July 2020 by bringing together all MFB firefighters and career CFA firefighters. FRV serves the populations of metropolitan Melbourne and major regional centres.

Name or title	Role during period investigated
FRV Commissioner	Fire Rescue Commissioner and head of FRV (Jul 2020–Mar 2023)
Mr Greg Sword AM	Member of the FRV Strategic Advisory Committee (Oct 2020–Oct 2025) Independent Member of the FRV Audit, Risk and Compliance Committee (Sep 2020–Sep 2025) (see also MFB)

The United Firefighters Union

The United Firefighters Union (UFU) is the recognised bargaining representative for Victoria's career firefighters. Prior to July 2020 career firefighters were employed by both the CFA and the MFB, requiring two Enterprise Bargaining Agreements (EBAs) to cover both career workforces. Since 2020, all career firefighters are employed by FRV. The UFU (Victorian Branch) is an affiliated union of the Victorian Branch of the Labor Party.

Name or title	Role during period investigated
Mr Peter Marshall	National Secretary of the UFU (1995–2022) Secretary of the UFU Victoria Branch (since 1995)

The Fair Work Commission

The Fair Work Commission (FWC) is Australia's national workplace relations tribunal, established under the *Fair Work Act 2009* (Cth) (FW Act). The FWC, as an independent body, carries out various functions including:

- facilitating good faith bargaining and the making of enterprise agreements
- approving, varying and terminating enterprise agreements
- dealing with disputes brought under dispute resolution procedures of modern awards and enterprise agreements.

While enterprise agreements are formally referred to as such under the FW Act, this report uses the term Enterprise Bargaining Agreement (EBA) to reflect common usage.

Name or title	Role during period investigated
FWC President	President of the FWC (Mar 2012–Nov 2022)
Fair Work Commissioner	Commissioner of the FWC (2010–17)

Premier's Private Office

The Premier's Private Office (PPO) is the political office of the Premier comprised of ministerial staff employed under the *Public Administration Act 2004* (Vic). The PPO is responsible for assisting the Premier with their parliamentary, ministerial and party-political responsibilities.

Name or title	Role during period investigated
Premier's Chief of Staff	Chief of Staff to the Premier (Nov 2014–Oct 2016)

Other persons

Name or title	Role during period investigated
Crossbench MP	Member of the Victorian Parliament Legislative Council (2018–22)

Overview

What IBAC found

IBAC commenced Operation Richmond in November 2018 to investigate allegations of corrupt conduct concerning negotiations for the 2016 EBA for the CFA. The investigation began after IBAC received information and complaints alleging that the Secretary of the UFU, Mr Peter Marshall, blackmailed or otherwise compromised the then-Premier, Mr Daniel Andrews, to change his position on the CFA EBA. Both Mr Andrews and Mr Marshall denied the allegation in evidence to IBAC. IBAC found no evidence for the alleged blackmail and did not substantiate that allegation.

Operation Richmond was expanded to include allegations relating to the negotiation of the former MFB EBA and the establishment of FRV (see section 2.3).

While IBAC did not find that any individuals engaged in corrupt conduct as defined in the IBAC Act, IBAC did find serious and concerning conduct by senior public officers, including ministers and members of Parliament relating to the negotiation of the CFA EBA, the MFB EBA, and the establishment of FRV. This included actions contrary to policy, procedure and codes of conduct, deliberate attempts to conceal and mislead, and the misuse of information.

IBAC found that as a result of an undisclosed deal that the government made with Mr Marshall, to the exclusion of other key stakeholders, the government placed itself in a position where Mr Marshall was able to exert extraordinary influence over the negotiations for both the CFA EBA and the MFB EBA. IBAC also found that Mr Marshall was granted privileged access to responsible ministers.

IBAC found that the conduct explored in this report increased the risk of corrupt conduct through improper influence and policy capture, undermining the effectiveness of accountability frameworks and enabling the politicisation of public appointment processes.

Negotiations for the CFA EBA

Operation Richmond established that in the context of the protracted dispute between the government and the UFU about the proposed CFA EBA, the Premier authorised the Special Minister of State, Mr Gavin Jennings, to commence negotiations directly with the UFU without the knowledge or involvement of the CFA or other parties (the 'undisclosed negotiations'). Mr Tony Bates, a Deputy Secretary at DPC, was enlisted to assist. Private meetings were held with the UFU in rented meeting spaces and a hotel. Those involved were instructed to keep the meetings confidential. After four days of undisclosed negotiations the parties agreed on the terms to be included in the proposed CFA EBA. Minister Jennings subsequently sent a text to the Premier stating, 'Handshake has occurred – it's done!'

IBAC found that these events led to the change in the government's position on the protracted dispute. Following the undisclosed negotiations, a document containing the terms agreed to by the parties was then presented to Cabinet and the public as a 'UFU proposal'. The Minister for Emergency Services, Ms Jane Garrett, the fire agencies and other relevant members of government, including Cabinet members, were not told of the negotiations or the provenance of the proposed EBA. In a lawfully intercepted telephone call on 22 March 2019, Mr Marshall gave an account of the origin of the EBA to a ministerial advisor: 'this agreement was negotiated with fuckin' Jennings in a back room. It was endorsed by fuckin' Andrews and Cabinet'.

Evidence gathered through Operation Richmond showed that the Premier sought to end the EBA dispute through a mechanism that excluded Minister Garrett, as he considered the Minister was unable to resolve the dispute and he wanted the matter to be concluded. At the time of the decision, the Premier was facing internal political pressure, negative media attention and industrial unrest.

IBAC found that the actions of the Premier, Minister Jennings and Mr Bates over this period were contrary to government policy, procedures, convention and their respective codes of conduct.

Finalisation of the CFA EBA

IBAC found that the undisclosed negotiations for the CFA EBA undermined the government's negotiating position, providing Mr Marshall with leverage and limiting the government's ability to resist his demands as they sought to finalise the CFA EBA. Following the undisclosed negotiations, Mr Marshall understood that he had a deal with the government (see section 3.3.2). IBAC considers that this was a reasonable belief on Mr Marshall's part given the circumstances set out in section 3.2. Although IBAC heard evidence that the 'UFU proposal' was still subject to change through pending review and approval processes, IBAC found that from that point forward Mr Marshall was resistant to any material changes to the terms of the CFA EBA that he had shaken hands on with Minister Jennings. Mr Marshall insisted that his deal be honoured under threat of further industrial action or public disclosure of the undisclosed negotiations (see section 3.3).[1]

IBAC established that the terms of the CFA EBA agreed to in the undisclosed negotiations remained in effect unchanged thereafter, with many of the terms then also carried across to a new EBA for the MFB. In May 2016, during conciliation for the CFA EBA at the FWC, Minister Jennings and Mr Bates continued to mislead their colleagues at the CFA and IRV by failing to divulge the undisclosed negotiations and the deal reached with Mr Marshall. While Minister Jennings did not attend the conciliation hearings, IBAC identified that he communicated with the presiding Fair Work Commissioner. Minister Jennings failed to disclose these communications with the Fair Work Commissioner to the CFA or Minister Garrett.

In June 2016, Minister Garrett resigned, prompted by her refusal to sign an EBA which she considered unacceptable. Mr James Merlino became the new Minister for Emergency Services. When the CFA Board refused to approve the proposed EBA, citing legal and operational barriers, Minister Merlino dismissed the Board. After further review of the EBA by a newly constituted CFA Board, the CFA approved the EBA in August 2016. However, changes to federal legislation at this time introduced additional protections for volunteer firefighters. The CFA EBA approved by the board was incompatible with these introduced requirements, and it did not progress to a vote of CFA employees.

Negotiations for the MFB EBA

In mid-2016, efforts shifted towards negotiations for the MFB EBA. Mr Marshall continued to pressure the government to honour his deal, expecting the terms of the CFA EBA to be carried across to the MFB. According to MFB CEO A's evidence to IBAC, the MFB held similar concerns about terms in the proposed EBA as the CFA – including that some terms were unlawful or undermined safety obligations. IBAC found that the government was largely not willing to force the issue. When Mr Bates or others attempted to make changes to the proposed MFB EBA to address the MFB's concerns, Mr Marshall again referred to his deal and refused to moderate the EBA to address the MFB's concerns.

Ultimately, to resolve the dispute, the government appointed new members to the MFB Board who understood the government's preferred position on the MFB EBA and reassured board members that the consequences of implementing the MFB EBA could be managed through side agreements (see section 3.4.3). The MFB Board approved the MFB EBA in January 2018 and the FWC approved it in February 2019. Upon the establishment of FRV, the EBA that applied to the MFB was transferred to FRV under the FW Act and an application was made by FRV to vary the EBA to ensure terms and conditions of employment were preserved for all employees.

1 IBAC notes that protected industrial action during enterprise bargaining negotiations is a right under the FW Act. IBAC makes no criticism of the legitimate exercise of this right.

Establishment of Fire Rescue Victoria

During its investigation, IBAC obtained evidence of possible corrupt conduct relating to the passage of the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019 (FSLAR Bill 2019) and the change in leadership at the MFB and FRV. IBAC did not substantiate these allegations but did identify other behaviour set out below that was contrary to government policy, codes of conduct and that presented corruption risks.

The FSLAR Bill 2019 provided for two main reforms: the restructuring of the fire services, with career firefighters from the CFA merging with those at the MFB to create FRV, and the establishment of presumptive rights for eligible firefighters diagnosed with certain firefighting-related cancers to receive compensation. Mr Marshall had long been an advocate for both reforms. He also had a strong preference for who should lead the fire services restructure and become Victoria's first Fire Rescue Commissioner.

IBAC found that Mr Marshall sought to shore-up a crossbench MP's support for the FSLAR Bill 2019 by employing the MP's relative in the days prior to the vote on the Bill in the Legislative Council in June 2019. In a lawfully intercepted phone call on 7 June 2019, Mr Marshall discussed the employment offer, telling a friend '[the MP] is 100 per cent behind us ... just to make sure we just employed [their relative]'.

In addition, IBAC's investigation established that between 2018 and 2019, Mr Marshall was provided with privileged access to the then-Emergency Services Minister, Ms Lisa Neville. IBAC found that Mr Marshall sought to influence Minister Neville's decision regarding the appointment of the FRV Commissioner. While IBAC makes no findings as to whether Mr Marshall did influence the Minister on the appointment of the FRV Commissioner, IBAC found that the Minister's stakeholder management of Mr Marshall created significant opportunities for him to do so. Mr Marshall's level of access to the Minister was also not reflected in the public statement made by Minister Neville about their engagements.

Finally, during this period, IBAC also found evidence that an MFB Board member, Mr Greg Sword, shared confidential information with Mr Marshall in 2019 in breach of his professional obligations.

Corruption risks and recommendations for reform

Operation Richmond exposed a range of corruption risks that warrant attention and reform. IBAC considers that corruption risks are those impacts that can amount to, or have the potential to enable, facilitate or result in, corrupt conduct. The identified risks include risks of improper access and influence, failures in ministerial conduct, failures by senior public servants to act impartially and the politicisation of appointment processes for public sector boards.

IBAC found that the decision of public officers to depart from established processes and practices in the negotiation of the CFA EBA, and their subsequent actions to protect the terms of the EBA privately agreed with Mr Marshall, allowed Mr Marshall to exert influence over the government both during the course of the 2016 CFA EBA negotiations and during IBAC's active investigation into the matter, which concluded in 2022. Due to the undisclosed negotiations and deal on the terms of the EBA, Mr Marshall was able to extract concessions from the government under the threat of industrial action, negative media coverage and public exposure of the undisclosed deal (see sections 3.3–3.5).

IBAC also identified instances of ministers behaving contrary to government policy, procedures and conventions, which undermined the government's regulatory coverage and facilitated Mr Marshall's influence over the government (see section 4.2.1). In particular, IBAC identified that the failure to disclose Minister Jennings' negotiations with the UFU to the responsible agencies, parliament and the public, meant that no one was in a position to properly hold the government to account for the way in which the fire services EBAs were negotiated and finalised.

Operation Richmond also highlighted how public servants can undermine effective and ethical public administration when they do not act as impartial advisors and implementers of government policy. This was most starkly demonstrated in the involvement of Mr Eccles and Mr Bates in the undisclosed negotiations for the 2016 CFA EBA, which they failed to disclose to key stakeholders and decision makers, including members of Cabinet and the responsible minister.

IBAC recognises the contractual obligations of senior public servants. For example, in the case of Mr Eccles, his employer was the Premier. Mr Eccles' employment contract placed upon him obligations to 'carry out any and all duties as directed' by the Premier, to 'faithfully serve' the Premier and 'at all times' use his 'best endeavours to promote the interest' of the Premier. However, his employment contract also required Mr Eccles to comply with the Public Sector Code of Conduct and all relevant rules and regulations while undertaking the duties of his role. If Mr Eccles significantly failed to fulfil any of those contractual duties or obligations, the Premier could terminate his employment.

The evidence as to precisely what was directed or authorised and by whom was somewhat unclear. In their involvement in the undisclosed negotiations, Mr Eccles and Mr Bates went beyond implementing government policy and instead worked to facilitate the Premier and Minister Jennings' political strategy to resolve the EBA dispute outside of established processes. Their actions and the serious consequences highlight the tensions that can arise under the employment arrangements for senior executives between their obligations to be responsive to ministers and their other contractual obligations. Further, the circumstances call attention to the essential role public servants play as stewards of good public administration, and the real impacts that occur when public servants fail to act, or are inhibited from acting, with integrity, impartiality and courage.

Finally, Operation Richmond demonstrated the risk of board appointment processes being manipulated to serve the political interests of the government of the day. IBAC found that the appointment processes for the CFA and MFB Boards lacked transparency and were manipulated to ensure that the appointees would be amenable to resolving the respective disputes and following directions to approve the respective EBAs in a form acceptable to government. The lack of openness and politically driven nature of these appointment processes fanned damaging perceptions that these entities were being used for political purposes to favour the UFU.

This report discusses potential reforms the government could progress to address the corruption risks identified in Operation Richmond. The commentary highlights a series of recommendations made to government in recent publications by IBAC and other integrity agencies, including IBAC's *Special report on corruption risks associated with donations and lobbying* (Donations and Lobbying Report), IBAC's *Operation Daintree special report* and the Victorian Ombudsman's (VO) 2023 investigation into the alleged politicisation of the public sector.

This report also contains three targeted recommendations that aim to:

- formalise and embed integrity standards for ministers by introducing a statutory requirement to publish the Ministerial Code of Conduct
- promote clarity and accountability regarding the application of constitutional conventions by developing a new Ministerial Handbook that explains key Westminster conventions
- strengthen awareness and understanding of ministerial obligations by centralising existing integrity guidance and updating ministerial training materials.

1 Jurisdiction and drafting notes

1.1 IBAC's jurisdiction

Investigating corrupt conduct

IBAC's functions in relation to corrupt conduct are set out in the IBAC Act. One of IBAC's primary responsibilities is to identify, investigate and expose corrupt conduct.[2]

Corrupt conduct is defined in section 4 of the IBAC Act. The definition captures conduct by public officers or public bodies that constitutes or involves:

- the dishonest performance of their functions
- knowing or reckless breaches of the public trust
- the misuse of information or material acquired in the course of their public functions.

The definition also captures conduct by any person that:

- adversely affects the honest performance of a public officer or public body's functions, or
- is intended to adversely affect the effective performance of a public officer or public body's powers or functions and result in the individual or an associate obtaining a benefit they would not otherwise have obtained.

Importantly, the definition requires that such conduct must *also* constitute a relevant criminal offence. Relevant offences include indictable offences against an Act, and some common law offences, such as bribery.

Another key common law offence that IBAC may seek to rely on to establish corrupt conduct is misconduct in public office. The offence, as set out in *Obeid v The King*,[3] consists of five key elements, namely:

1) a public official;
2) in the course of or connected to their public office;
3) wilfully misconducts themselves; by act or omission, for example, by wilfully neglecting or failing to perform their duty;
4) without reasonable cause or justification; and
5) where such misconduct is serious and *meriting criminal punishment* having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

   [emphasis added]

As noted in IBAC's submission to the parliamentary inquiry into the adequacy of IBAC's legislative framework, IBAC has encountered difficulties establishing this offence given its limits remain vague and subject to judicial interpretation.[4] IBAC has commonly faced particular challenges in the practical application of the fifth element, which requires IBAC to assess an individual's conduct as meriting criminal punishment.

The nature of IBAC's findings

IBAC is not a court. It is prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a criminal offence, or that a person should be prosecuted for any such offence. Unlike a court, IBAC is not bound by the rules of evidence and, in producing a special report, it is not required to apply the criminal standard of proof (proof beyond reasonable doubt).

IBAC is also prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a disciplinary offence (such as a breach of discipline by a police officer or misconduct by a public sector employee), or that a public officer should be prosecuted for any such offence.

However, in a special report, IBAC can make findings of fact and can express comments or opinions about a person's conduct, including if it involved a breach of public trust. Codes of conduct, guidelines, policies and procedures provide an important reference point for assessing conduct. In expressing comments or opinions by reference to these instruments, IBAC makes no comment about the potential disciplinary or criminal consequences of the conduct.

In making its findings, IBAC applies the civil standard of proof (proof on the balance of probabilities), according to what is commonly referred to as the Briginshaw principle.[5] Under this principle, IBAC has regard to the seriousness of the finding, the inherent likelihood or unlikelihood of the fact in question, and the gravity of the consequences that may flow from the finding.

2 IBAC Act s 15(2)(a)
3 *Obeid v The King* [2026] HCA 1.
4 IBAC 2025, *Submission to the Inquiry into the adequacy of the legislative framework for the Independent Broad-based Anti-corruption Commission*, IBAC, Melbourne, pp 4–5.
5 *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Public reporting

IBAC can publish a special report relating to the performance of its duties and functions at any time. This includes a special report about an investigation into suspected 'corrupt conduct' and the outcomes of that investigation.[6]

Public reporting supports the performance of IBAC's functions, by helping to strengthen the public sector's ability to identify, detect and resist corrupt conduct by highlighting conduct capable of constituting corrupt conduct, and vulnerabilities in systems, policies and controls that may increase the likelihood of such conduct occurring in future. Public reporting also provides the community with confidence that complaints of corrupt conduct in the public sector will be appropriately investigated.

Publishing a special report on Operation Richmond is a matter of public interest and serves to inform parliament and the wider public about the steps IBAC has taken to identify, expose and investigate alleged corrupt conduct involved in the negotiation of landmark enterprise agreements for the CFA and MFB and the significant fire services reforms that took place between 2018 and 2019 that saw the establishment of Fire Rescue Victoria. This report explores a range of conduct which, although did not meet the statutory criteria to establish corrupt conduct within the IBAC Act, including the commission of a relevant criminal offence, has the potential to enable, facilitate or result in corrupt conduct. In reporting on this conduct, IBAC seeks to illustrate how existing behaviours, systems, policies and controls have the potential to facilitate corrupt conduct, and highlight areas where improvements can be made to minimise the risk of corrupt conduct occurring in the future.

Accordingly, this report contains recommendations issued under section 159 of the IBAC Act which aim to address key risks relating to the conduct of ministers exposed in Operation Richmond that increased the likelihood of and their vulnerability to corrupt conduct in the form of improper influence (see section 2.5).

1.2 Constraints on IBAC's jurisdiction

Aspects of the Operation Richmond investigation deal with events that occurred in the context of parliamentary proceedings, Cabinet discussions and proceedings before the FWC.

IBAC is mindful of the scope of its jurisdiction, and that it cannot intrude on the jurisdiction of other bodies that are empowered to investigate and sanction misconduct that occurs within the ambit of their constitutional or statutory purpose. The following explains the relevant constraints and sets out how IBAC has approached this special report where those restrictions apply.

Parliamentary privilege

IBAC's jurisdiction does not extend to matters that are covered by parliamentary privilege.

Parliamentary privilege is a convention by which Parliament's independence and proper functioning are protected by ensuring that it can conduct its business without interference from the executive or the judiciary. The convention was first articulated in the *Bill of Rights 1689* (UK) and is incorporated into Victorian law under section 19(1) of the *Constitution Act 1975* (Vic).[7]

The breadth of parliamentary privilege in Victoria is not clearly defined. The privilege is generally understood to apply to documents and things said or done with a purpose sufficiently connected to the business of Parliament, including the business of each House and parliamentary committees.

In the context of IBAC's functions to investigate and expose corrupt conduct, parliamentary privilege constrains IBAC from making a finding or observation that suggests that a document or statement made, or tabled in Parliament, or in parliamentary committees, was inspired by improper motives, or was untrue or misleading. In practical terms, this means that any allegations of misconduct that arise from parliamentary proceedings are matters that can only be investigated and examined by parliamentary bodies, such as the Privileges Committee of each house. Parliamentary privilege can be abrogated by legislation. However, no such abrogation is included in the IBAC Act.

6 IBAC Act s 162(1).
7 *Barber* v *Victoria* (No 2) [2013] VSC 71 at [27] (per Emerton J); See also, *Imperial Acts Application Act 1980* (Vic) s 3 pt 2 div 3 which separately gives effect to art 9.

Cabinet confidentiality

Cabinet is the core decision-making body of the executive government. Cabinet confidentiality is a convention by which deliberations and decisions, and the associated documents and information, of Cabinet or a sub-committee of Cabinet are confidential, unless they are made available under legislative or Cabinet authority. Similar to parliamentary privilege, Cabinet confidentiality promotes open discussion, including the airing of dissenting views, within the confines of a Cabinet meeting.

This report includes information about the deliberations of Cabinet. While Cabinet confidentiality is not abrogated by the IBAC Act, Cabinet information can be included where, as in this case, the executive government has advised IBAC that a claim of public interest immunity over the information will not be made.

Commonwealth bodies

IBAC's powers to investigate and report are constrained by the IBAC Act, as well as the necessary constitutional limitation that prevents IBAC, as a special body established by the Victorian Parliament, from investigating or commenting on matters that are within the exclusive jurisdiction of Commonwealth bodies. However, IBAC may investigate and report on the conduct of Victorian public officers and public bodies in the context of Commonwealth processes, if the conduct would constitute a relevant offence in Victoria.[8]

IBAC's approach to matters in Operation Richmond where these constraints apply

IBAC received information during the Operation Richmond investigation that is outside the scope of this report because it engages the conventions of parliamentary privilege or Cabinet confidentiality (except for the specific circumstances outlined above) or matters that are within the exclusive jurisdiction of the FWC, which is a Commonwealth body.

While IBAC is not able to consider such information in this special report, section 41 of the IBAC Act allows IBAC to provide that information to certain other entities where it might be relevant to the performance by those entities of their duties and functions. Such entities include integrity and law enforcement bodies. Section 41 also provides for a Parliamentary Committee to request information acquired by IBAC, where IBAC has made a report and a House of Parliament has, by resolution, referred the report to its Parliamentary Committee to determine whether there has been a breach of parliamentary privilege or contempt of Parliament.

IBAC will consider whether it should provide to other authorised entities any relevant information acquired and any appropriate requests by a Parliamentary Committee for information under section 41 resulting from the tabling of this report.

8 *HJ* v *IBAC* (2022) 370 FLR 291.

1.3 Drafting note

Report overview

The summary of IBAC's findings at the beginning of this report is designed to provide readers with a clear and concise synopsis of the key events and findings of Operation Richmond. This summary contains adverse findings, comments and opinions about individuals and entities. The evidentiary basis for each of these is specified in the body of the report.

Section overviews

In this report IBAC has included an overview at the beginning of some sections that summarises IBAC's findings about the events discussed within that section. The evidentiary basis for each adverse finding, comment or opinion contained in such overviews is specified within that section, or, where IBAC has specified the evidence elsewhere in the report, cross-references are provided to guide readers to the relevant sections.

Commentary on the adequacy of systems, policies and controls

The final section of this report provides observations about the deficiencies in behaviour, systems, policies and controls exposed in Operation Richmond which could enable, facilitate or result in corrupt conduct. This is IBAC's synthesis of the information and evidence explored in the preceding sections of the report and, for any adverse findings, comments and opinions contained within this section, IBAC relies on that evidence, in its totality, as well as the specific evidence cited in this commentary. Where appropriate, cross-references to relevant sections of the report are provided to specific evidence set out elsewhere in the report on which IBAC relies.

Natural justice

In line with IBAC's obligations under ss 162(2) to 162(4) of the IBAC Act, IBAC provided adversely and non-adversely mentioned witnesses in Operation Richmond with extracts from a draft version of this report. Adversely mentioned witnesses were provided with an opportunity to respond prior to tabling. IBAC has a statutory requirement to set out responses fairly.

IBAC received several responses from witnesses. Some witnesses did not respond. Material changes have been made to the body of this report as a result of some of those responses. Elements of responses not incorporated in the body of the report, or not fully incorporated, are reflected in Appendix A (alphabetically), along with a more detailed outline of the process we followed. Elements of responses which IBAC considered extraneous to this report and its evidentiary basis are not reflected in this report.

2 Background

2.1 Legal and regulatory framework

This section provides an overview of relevant public sector processes and policies applicable to ministers, public servants and board directors. These taxpayer-funded officials are collectively referred to as 'public officers' in this report.

2.1.1 Westminster conventions and practices

The separation of powers, responsible government and ministerial responsibility

The concept of separation of powers refers to the separation of the main institutions of government: the executive (the premier, ministers and public service), the legislature (parliament) and the judiciary (courts). The separation of these primary institutions aims to ensure independence, accountability and clear responsibility across the system.[9]

Victoria's system of government is derived from the UK Westminster system. In the Victorian system of government, members of the executive are drawn from and responsible to the Victorian Parliament, in accordance with the convention of responsible government. This helps to ensure the government remains accountable to the Victorian people through its elected representatives.

Under the Westminster system, one way in which the executive is held accountable to parliament is through the convention of ministerial responsibility. Ministers have both collective and individual ministerial responsibilities.[10] As individuals, the convention of ministerial responsibility requires ministers to answer to parliament for actions within their assigned portfolios.[11] Collective responsibility (or 'cabinet solidarity') requires ministers to accept cabinet decisions once they are made.[12] This does not diminish individual ministerial responsibility. The convention of ministerial responsibility enables the community (through parliament) to hold the government to account and ensure it acts in the public interest.

An impartial, merit-based public sector

The Westminster system relies on the executive being assisted by a professional and non-partisan public sector, selected through merit-based employment practices. The Victorian public sector comprises the Victorian Public Service (VPS), public entities (such as the CFA and FRV), and special bodies (such as the PWSI Commission). While governments rightly receive advice from a variety of sources, a primary function of the public sector is to provide 'frank, impartial and timely' advice designed to be free from political influence or affiliation.

The VPS often provides its policy advice to ministers, Cabinet and its sub-committees through briefs and submissions. Cabinet is the principal decision-making body for the government. It considers questions of policy, administration and legislation, including proposed EBAs.

Public entities operate at arm's length from government. They are still accountable to their minister, but their functions or powers are defined by their governing legislation, constitution and activities. These entities are usually led by a board of directors who must act in their entity's best interests.

9 Parliament of Victoria 2017, *Independence of Parliament*, Bruekal et al., POV, East Melbourne, p 8.
10 Victorian Government 2023, *Ministerial Code of Conduct*, clause 3.1.1.
11 Parliament of Victoria 2017, *Independence of Parliament*, Bruekal et al., POV, East Melbourne, p 10.
12 Victorian Government 2023, *Ministerial Code of Conduct*, clause 3.1.2.

2.1.2 Codes of conduct

Public officers are regulated by codes of conduct to ensure they act in the public interest and maintain public trust in the institutions they represent. Relevant codes are summarised below.

Ministers and parliamentary secretaries

During the events of Operation Richmond (2016–19), the 2012 version of the *Code of Conduct for Ministers and Parliamentary Secretaries* (Ministerial Code) was applicable to ministers. This code required ministers to advance the public interest through honest, efficient and effective government; carry out their duties with integrity, fairness and accountability; provide a proper account of the exercise of public office and portfolio activities; and be conscious of conflicts of interest.[13]

IBAC does not purport to have a role in sanctions for breach of the Ministerial Code. However, this does not preclude IBAC from independently expressing an opinion about whether particular conduct by a minister was contrary to the code.

Public sector employees

Public sector employees must act in accordance with the Public Sector Values (the Values) and related responsibilities set out in the *Public Administration Act 2004* (Vic) (PA Act). The Values are responsiveness, integrity, impartiality, accountability, leadership, respect and human rights.[14] The Values are further defined in the *Code of Conduct for Victorian Public Sector Employees* (the Public Sector Code of Conduct).[15] Compliance with the Public Sector Code of Conduct is mandated in employment contracts.[16] The current edition of the Public Sector Code of Conduct came into effect on 1 June 2015.

For public body directors, the Values are further defined in the *Code of Conduct for Directors of Victorian Public Entities*, which came into effect on 29 March 2016.[17] This version was in operation during the events of Operation Richmond and remains current.

2.1.3 Public sector industrial relation enterprise bargaining

The *Public Sector Industrial Relations Policies* (PSIRP) are an overarching set of standards, requirements and guidelines developed by the Victorian Government to guide the public sector's approach to industrial relations, including enterprise bargaining negotiations. An EBA is an agreement between an employer and its employees about the terms and conditions of employment. While the PSIRP 2012 was the version inherited by the Labor government, an update was developed during 2015 and formally came into effect in June 2016.[18]

Both versions provide that secretaries are responsible for the overall management of industrial relations issues within their department and portfolio agencies. The PSIRP 2015 state that while ministers maintain relationships with unions and employees, they remain outside negotiations.

Negotiations are typically conducted between employee representatives, such as unions, and representatives from the relevant department or agency. During the bargaining process, some parties prepare what is known as a 'log of claims'. A 'log of claims' generally sets out the terms of the agreement that a negotiating party proposes be included in an EBA and is used in negotiations during bargaining. In the event of a disagreement or dispute, parties can apply to FWC to deal with the dispute. The FWC can assist to resolve disputes through conciliation, mediation or by making non-binding recommendations.[19]

The steps for creating an EBA within the public sector are detailed in the PSIRP.[20] Negotiating parties are required to negotiate on potential terms in adherence with the principles of good faith bargaining as presented in the FW Act. Following negotiations, the proposed EBA is provided to government for endorsement, after which employees vote on whether to accept the EBA, with a majority required. The proposed EBA is then lodged with the FWC for assessment as to whether it meets certain criteria, such as not containing any unlawful terms.

13 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clauses 2.1, 2.2, 2.3, 2.4, 2.12 and 8.5.
14 *Public Administration Act 2004* (Vic) s 7.
15 Victorian Public Sector Commission 2015, *Code of Conduct for Victorian Public Sector Employees*, 1 June 2015.
16 See for example, Victorian Public Sector Commission 2021, *VPS Standard Employment Contract*, clause 3(d).
17 Victorian Public Sector Commission 2016, *Code of Conduct for Directors of Victorian Public Entities,* 29 March 2016.
18 Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Department of Economic Development, Jobs, Transport and Resources, Vic Gov, Melbourne.
19 *Fair Work Act 2009* (Cth) ss 240(1), 595(2).
20 Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015,* Department of Economic Development, Jobs, Transport and Resources, Vic Gov, Melbourne.

2.2 Context

Operation Richmond concerned the period leading up to and after the government's change in direction on the CFA EBA in April 2016, and subsequent events involving the fire services extending to 2019, including the negotiation of the MFB EBA, the passage of the FSLAR Bill 2019 and the establishment of FRV. This section provides an overview of preceding events.

2.2.1 Labor's pre-election commitments to the UFU

A key issue during the 2014 state election campaign was the negotiation of new fire services EBAs to replace the 2010 EBAs that applied to both the MFB and the CFA. In that context, the Labor Opposition made a series of commitments to the UFU prior to the November election in a letter, to which Mr Andrews was a signatory. Mr Andrews' Chief of Staff said in evidence that the letter was similar to those sent to other stakeholders, not just unions. Key commitments to the UFU included introducing legislation to give firefighters presumptive rights to compensation for cancer caused by their service, recruiting 450 firefighters, and conducting a review into the fire services. These commitments were in the public domain, as reflected in Labor press releases and UFU bulletins which were publicly available at the time.

During evidence to IBAC, Mr Andrews said that he had meetings with Mr Marshall prior to the election and that they may have also talked on the phone. He noted that these conversations were part of a normal arrangement in place with union secretaries. IBAC notes that in 2014, similar undertakings had also been made by Labor to other groups of workers, including paramedics.[21]

2.2.2 UFU support during the 2014 Labor state election campaign

Prior to the election, the UFU undertook what Mr Marshall described to his members in a UFU bulletin dated 30 November 2014 as an 'extensive, comprehensive and at times exhaustive nine-month campaign'. The bulletin, which was released the day after Labor's victory, congratulated members on the 'outstanding success of the election campaign' and noted that UFU members had held thousands of conversations and handed out more than 300,000 cards. The UFU's campaign also involved 720 firefighters handing out how to vote cards at 109 polling locations and members doorknocking against the Coalition.

In the lead-up to the recommencement of negotiations for the CFA and MFB EBAs Mr Marshall told members, in a bulletin dated 13 March 2015, that he was confident of a positive outcome in the environment of the new Labor government.

2.2.3 CFA EBA negotiations from 2015 to early 2016

> IBAC has not sought to assess the merits of the UFU claim or the fire services' response. Rather, Operation Richmond was concerned with the integrity of the *process* to conclude the CFA and MFB EBAs. IBAC has, however, previously commented on the potential corruption risks posed by consult and agree clauses. See IBAC's special report on Operation Turton for further information.

Following the election, Ms Garrett was appointed Minister for Emergency Services and initially focused on the pledge for 450 additional firefighters. IBAC heard evidence that the initiative was one of the biggest costs in the budget and was elevated to the PPO to coordinate.

21 Victorian Labor 2014, *Victorian Labor Platform 2014*, Victorian Branch of the ALP, pp 18–20.

Negotiations for the fire services EBAs were initially focused on the CFA EBA. From February 2015 the parties negotiated on terms, with the government's interests represented by the CFA and EMV, with IRV and staff from Minister Garrett's office and the PPO also involved.

Negotiations centred on the UFU's log of claims, which took the form of a draft agreement in excess of 400 pages. A near identical log was also presented to the MFB. In their evidence to IBAC, MFB CEO A said that the draft agreement was highly unusual, noting that 'a similar Agreement in similar organisations around Australia would perhaps run to 30 or 40 pages ... the Agreement itself was quite extraordinary'.

IBAC heard that the UFU and government had different expectations of how negotiations would proceed. A PPO advisor (PPO advisor A) gave the following evidence:

> I don't want to necessarily put words in Peter Marshall's mouth but I think he [Mr Marshall] felt that he was going to sit in a room with the Premier, the Minister or the Treasurer, say this is what's going to be in there, get one of his people to go and type it up, shake hands, move on and that'd be that. That was definitely not the view of the Victorian Government because they had an Industrial Relations Policy Framework that needed to be met ...

Key issues in dispute during the negotiations for the CFA EBA

IBAC heard evidence that the negotiations quickly encountered challenges, with the CFA and government opposing several key elements of the UFU's claim.

A key concern for the CFA, Minister Garrett and the Treasurer were clauses in the log of claims which required the CFA to consult and agree with the UFU on a range of matters before changes could be made. For example, the CFA was required to consult and seek agreement from the UFU before making improvements in efficiency and productivity for employees covered by this agreement. These clauses were known as 'veto clauses' because they required that agreement be reached before actions could be taken under the relevant clause. While the 2010 CFA EBA had contained a small number of clauses impacted by consult and agree requirements, IBAC heard from Mr Bates that the UFU's log of claims contained many more. The UFU also sought to amend the EBA to introduce a greater obligation on CFA management to secure UFU agreement before making a broader range of potential changes.[22]

The government was also intent on increasing female workforce participation. A 2015 review of the fire services, established under the *Inquiries Act 2014* (Vic), had identified instances of sexual harassment and threatening behaviour and a workplace culture that was not supportive to women.[23] In 2016, the government committed to implementing the majority of the review's recommendations, including broader working arrangements such as part-time work.[24]

22 This is based on a side by side comparison of the 2010 CFA EBA and the Nov 2015 UFU log of claims (v17.1) in full. Clause 14 of the 2010 EBA referred to utilising the consultation clause, 'where the employer wishes to implement **significant** change in matters pertaining to the employment relationship in any of the workplaces covered by this agreement'. The UFU log of claims (clause 22) omitted the word 'significant', broadening the scope of matters for which consultation would be required. Related changes to the consultation clause (clause 13 in the 2010 EBA, 21 in the 2015 EBA) amended the consultation process to require unanimous agreement. Together these two amended clauses broadened the number of matters requiring UFU agreement.

23 Victorian Government 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, David O'Byrne, Vic Gov, Victoria, p 32.

24 Premier of Victoria 2016, 'Government Response to Fire Services Review', press release, 16 March 2016.

Relatedly, the CFA was concerned about the lawfulness of the UFU's log of claims, namely that it was not compliant with the *Equal Opportunity Act 2010* (Vic). The CFA's position was informed by a compliance review conducted by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) at CFA's request.[25] In its final report dated 31 December 2015, VEOHRC found that of a total of 239 clauses in the log of claims, 15 were not compliant, 10 were potentially not compliant and 16 required clarification to assess their compliance. The non-compliance issues identified by VEOHRC related to clauses considered to be directly or indirectly discriminatory (including regarding caring responsibilities, disability and age) and clauses likely to prevent the CFA from complying with its obligations under the *Equal Opportunity Act 2010* (Vic) (including its duty to take all reasonable steps to eliminate discrimination, sexual harassment and victimisation as far as possible). The problematic clauses covered a range of matters including rostering, working arrangements, rank and progression. The FWC is not able to approve EBAs with unlawful terms.[26]

The review noted that compliance with the *Equal Opportunity Act 2010* (Vic) was particularly important in light of low female participation rates in the CFA workforce. The review noted that they had been instructed that 'only 2.9% of operational staff (i.e. career firefighters) are women – 31 out of 1,082 total firefighters'.[27]

A further key issue of concern was a clause in the UFU's claim that it was unsafe to start firefighting operations until seven paid firefighters were on the fireground (essentially two trucks would be required). Minister Garrett told IBAC she was concerned that the 'seven on the fireground' requirement would undermine the CFA's operational capacity and 'violently separate paid and volunteer staff' in firefighting activities, which would greatly restrict their capacity to use volunteers in the way they had in the past. The CFA CEO told IBAC that they viewed the requirement as a misuse of resources and that it significantly intruded on the operations of the CFA. As part of his response to the draft report, Mr Marshall maintained that this was an incorrect reading of the seven on the ground clause; that there is no differential treatment of volunteers if volunteers, like career firefighters, can respond to an incident and commence fireground operations. He stated that this clause was included in the EBA that was subsequently confirmed by the FWC.

The final key matter of concern was the overall cost of the agreement, including proposed wage increases and allowances. In his evidence to IBAC, Mr Andrews said that the UFU's wages claim was well in excess of the government's Wages Policy. The Treasurer stated that the UFU's position was unaffordable.

Progression of the CFA EBA negotiations through 2015

Despite initial hope that a dispute could be avoided, negotiations quickly broke down in 2015 and the UFU began to publicly ventilate its concerns. On 1 April 2015, Mr Marshall wrote a letter to the Premier threatening a 'campaign to achieve wage justice for firefighters'. On 13 April 2015, the letter was reported on in a news article titled 'Firefighters union delivers pay rise ultimatum to Premier Daniel Andrews'. In her examination by IBAC, Minister Garrett said that Mr Marshall had leaked the letter to the media.

Ms Garrett told IBAC in her examination that Mr Marshall also became upset at her and responded with a 'huge torrent of abuse' after she refused to intervene in a disciplinary matter involving an MFB employee. Mr Marshall had asked Minister Garrett to order that the MFB withdraw the disciplinary process in favour of restorative justice and development of a code of conduct. Ms Garrett said that Mr Marshall then sent information about the matter and the UFU's election support to Labor MPs, threatened to ban the Minister from fire stations and, in her words, 'bring hellfire down on the government'. Consistent with Minister Garrett's evidence, an advisor in Minister Garrett's office recounted a phone call from Mr Marshall to the Minister in which he gave the Minister 'a big spray' that left her 'really rattled'. In his examination by IBAC, Mr Marshall denied ever acting in a way that might be described as threatening to Ms Garrett.

IBAC found that despite the engagement of an external facilitator to assist with the bargaining in 2015, by late 2015 negotiations had reached an impasse. The UFU had also begun industrial action.

In a news article on 23 October 2015 titled 'CFA pay row ablaze', the media reported that the government awarded a five per cent wage increase to CFA firefighters. In November 2015, the government offered to roll over the 2010 EBA with a 14.7 per cent pay rise over four years. It was rejected.

25 The VEOHRC review was conducted under s 151(1) of the *Equal Opportunity Act 2010* (Vic).
26 *Fair Work Act 2009* (Cth) s 186(4).
27 Victorian Equal Opportunity and Human Rights Commission 2015, *Country Fire Authority Compliance Review*, VEOHRC, 31 December 2015, p 3.

Later in November, the government referred the dispute to the FWC for conciliation. During this period, in mid-January, a second facilitator was engaged to mediate the dispute but to no success. The facilitator was Mr Greg Sword, the former Labor Party National President and subsequent MFB Board member.

As reflected in UFU bulletins from December 2015 to February 2016, the UFU continued industrial action into 2016 and conducted a communications campaign against the government. On 19 February 2016, after the presiding Fair Work Commissioner provided draft recommendations, the CFA advised the FWC that it did not support the making of a final recommendation, as it did not believe it would resolve the dispute. On 24 February 2016, the CFA CEO sent a letter to Mr Marshall offering to roll over the 2010 EBA terms, add new provisions and provide for a five per cent wage increase on approval of the agreement (on top of the five per cent already paid) and an additional three per cent wage increase annually in 2017, 2018 and 2019. The offer was again rejected.

On 7 March 2016, the parties met again at the FWC at the request of the UFU. An email sent on 7 March from IRV addressed to Minister Garrett's advisors indicates that the government and the CFA saw no utility in continuing the FWC process. On 8 March 2016, the Commission decided not to make a final recommendation at that stage and adjourned the matter.

As detailed in section 3.2.2, IBAC heard evidence from both Mr Andrews and Mr Jennings that by this point the situation had hit a crisis point. Mr Andrews described the situation as 'completely intractable' with the negotiating parties being 'miles apart'.

2.3 The allegations

IBAC commenced Operation Richmond on 8 November 2018. The genesis of the investigation was IBAC's receipt of complaints and information that Mr Marshall had blackmailed or made an unlawful demand of the Premier to change the Victorian Government's position on the proposed EBA for the CFA. IBAC found no evidence for the alleged blackmail and did not substantiate that allegation.

IBAC widened the scope of the investigation on 29 July 2019 as information had emerged during the investigation that provided reasonable grounds to suspect that Mr Marshall had provided an inducement to a crossbench MP with the intention of influencing the crossbench MP's vote on the FSLAR Bill 2019.

IBAC further widened the scope of the investigation on 22 September 2020 as further information emerged that provided reasonable grounds to suspect that the conduct of certain ministers and senior public servants, in facilitating the agreement and implementation of the EBAs, constituted the common law offence of misconduct in public office.

IBAC did not substantiate the above allegations as IBAC could not establish that the conduct constituted a relevant offence, which is required to substantiate allegations of corrupt conduct under the IBAC Act (see section 1.1). As detailed in this report, IBAC did, however, find serious and concerning conduct related to these allegations.

2.4 The investigation

To investigate the allegations in Operation Richmond, IBAC:

- executed search warrants on three premises
- conducted eight voluntary interviews and obtained statements from these witnesses
- conducted private examinations of 45 witnesses
- issued 41 summonses to produce information
- analysed data from more than 50 devices seized during the execution of search warrants, including mobile phones, computers, tablet devices and USBs
- analysed telephone calls and text messages lawfully intercepted under warrant
- analysed telecommunication data and email communications seized both under summons and warrants
- reviewed relevant legislation and codes of conduct
- reviewed other documentary evidence, including:
  - UFU bulletins
  - handwritten notes of relevant parties to the conduct
  - memorandums of advice
  - statements issued by the Premier
  - board meeting minutes and related correspondence.

2.5 List of s 159 recommendations

Recommendation 1

IBAC recommends that the Premier introduces legislation to establish a statement of values for ministers and require the publishing and periodic review of a Ministerial Code of Conduct to be based on the statement of values.

Recommendation 2

IBAC recommends that the Premier publish a Ministerial Handbook that brings together existing integrity guidance and policies for ministers and their staff, with new guidance on the operation of the Westminster conventions in a Victorian context (with reference to the New South Wales Ministerial Handbook provisions).

Recommendation 3

IBAC recommends that the Secretary of the Department of Premier and Cabinet update training materials for ministers to include new guidance on:

- navigating relationships with interest groups and lobbyists
- Westminster principles and conventions.

3 IBAC's findings

3.1 Timeline of key events

Negotiations for the CFA EBA

November 2014
Labor is elected at the Victorian state election.

February 2015
Negotiations for the new CFA EBA progress under new Labor government.

November 2015–March 2016
EBA dispute is before FWC for conciliation.

March 2016
The Premier authorises Minister Jennings to take over the EBA negotiations.

25 March 2016
DPC Secretary, Mr Chris Eccles, instructs Mr Bates, DPC Deputy Secretary, to work with Minister Jennings on the negotiations.

6–12 April 2016
Minister Jennings and Mr Bates hold negotiations with the UFU.

12 April 2016
Minister Jennings and Mr Marshall settle terms for an updated draft CFA EBA.

13 April 2016
Mr Marshall meets the Premier and presents a copy of the negotiated EBA.
The EBA is presented to Minister Garrett and others as a 'UFU proposal'.

13–19 April 2016
DPC drafts Cabinet submission and DTF review the 'UFU proposal'.

19 April 2016
ERSC consider the 'UFU proposal'.

13 May 2016
Parties return to the FWC for further conciliation.

1 June 2016
The FWC hands down its Final Recommendation.

10 June 2016
Minister Garrett resigns.
Minister Merlino appointed Minister for Emergency Services.
CFA Board refuse to endorse the draft CFA EBA.
Government begins proceedings to dismiss the CFA Board.

17 June 2016
CFA CEO resigns.

12 August 2016
New CFA Board endorses the draft EBA.

22 August 2016
Federal Government publishes the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 to amend the FW Act, introducing additional protections for volunteer firefighters.
The CFA EBA approved by the CFA Board is incompatible with these introduced requirements, and its progress is halted.

Negotiations for the MFB EBA

August 2016
Focus shifts to negotiations for a new MFB EBA.

June 2017
Board member A appointed to the MFB Board.

July 2017
MFB CEO A resigns.

January 2018
MFB Board vote on the proposed EBA is split.

MFB Board President resigns, and Board member A appointed as new President.

Government appoints seventh member to the MFB Board.

MFB Board approve the EBA.

March 2018
Mr Sword joins the MFB Board.

MFB workforce endorse the EBA.

18 February 2019
FWC certify the MFB EBA.

Establishment of FRV

24 May 2017
Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (FSLAR Bill 2017) introduced in Parliament.

29 March 2018
FSLAR Bill 2017 defeated by single vote in Upper House.

29 May 2019
Minister Neville introduces FSLAR Bill 2019 to Parliament.

31 May 2019
Mr Marshall seeks to influence a crossbench MP's support for the FSLAR Bill 2019 by employing their relative.

6 June 2019
FSLAR Bill 2019 passed in the Lower House and moves to Upper House.

20 June 2019
FSLAR Bill 2019 passed in the Upper House.

1 July 2020
FRV established.

Appointment of the Fire Rescue Commissioner

Early 2018
Government begins selection process for new MFB CEO.

Mr Marshall promotes a candidate to government.

18 April 2018
Announcement of the new MFB CEO B, who is not Mr Marshall's preferred candidate.

29 Nov 2018
Ms Neville appointed Minister for Emergency Services following state election.

Early 2019
Mr Marshall seeks to influence Minister Neville's selection of the FRV Commissioner.

28 May 2019
MFB Board member Mr Sword shares confidential information with Mr Marshall.

12 July 2019
MFB CEO B resigns.

4 December 2019
Minister Neville appoints the new FRV Commissioner, who was also Mr Marshall's preferred candidate.

3.2 Negotiations for the CFA EBA in March–April 2016

3.2.1 Overview

IBAC found that by late March 2016, the Premier had lost confidence in Minister Garrett to deliver the CFA EBA. IBAC heard evidence that the Premier wished for the issue to be promptly resolved, but that the relationship between Minister Garrett and the UFU had become dysfunctional, and negotiations had reached an impasse (see section 3.2.2).[28]

Based on the evidence set out below, the Premier subsequently authorised the Special Minister of State, Mr Jennings, to take over the EBA negotiations with the UFU. DPC Deputy Secretary, Mr Bates, was instructed by the DPC Secretary, Mr Eccles, to assist Mr Jennings. Negotiations were held over two weeks in early April 2016, during which the parties made a deal on acceptable terms (see section 3.2.3).[29] The UFU's updated log of claims was then presented to government stakeholders and the Expenditure Review Sub-Committee of Cabinet (ERSC) as a 'UFU proposal'. Relevant ministers and agencies were not told of the negotiations or the provenance of the 'UFU proposal' (see section 3.2.4 and 3.2.5).[30]

IBAC considers that, while the conduct identified in section 3.2 may be capable of enabling, facilitating or resulting in corrupt conduct, IBAC could not establish that the identified conduct met all required elements to make findings of corrupt conduct under the IBAC Act.

3.2.2 Authorisation to take over the negotiations

Discussions preceding the decision to shift responsibility for the negotiations

IBAC heard evidence from Minister Jennings that his conversations with his then-Parliamentary Secretary were the precursor to him taking over the CFA EBA negotiations:

> Um they – in – in fact these conversations did lead to the precursor to me receiving the direction from the Premier.

The Parliamentary Secretary gave evidence that in early 2016 they had been approached by a federal Labor senator (Senator A) about the matter and that Senator A told them that they needed to understand that many claims in the media about the CFA EBA were untrue. The Parliamentary Secretary understood that Senator A had been in discussions with Mr Marshall about the CFA EBA negotiations. After discussing the matter with Senator A, the Parliamentary Secretary then approached Minister Jennings, and they discussed the UFU's interest in finding a way forward.

The Premier authorises Minister Jennings to take over the CFA EBA negotiations

Minister Jennings gave evidence to IBAC that towards the end of March 2016, he attended a meeting with the Premier. Minister Jennings explained that during the meeting the Premier asked him to see how far the CFA EBA was from resolution, what the outstanding issues were and whether they could be accommodated. Mr Jennings understood the Premier's request to be an instruction to undertake a process to determine whether the current impasse could be resolved and the EBA reach a form that could be considered by Cabinet.

28 In particular, see section 3.2.2, 'Factors affecting the decision to shift responsibility for the negotiations'.
29 In particular, see section 3.2.3, 'The undisclosed negotiations'.
30 In particular, see section 3.2.4, 'Minister Garrett and the fire services' response to the 'UFU proposal', and 3.2.5, 'ERSC consideration of the 'UFU proposal'.

Minister Jennings provided evidence that he had a broad remit as Special Minister of State, responsible for monitoring the implementation of election commitments and working on priority activities in accordance with the wishes of the Premier. At that time though, he did not have a designated role regarding the CFA EBA.

IBAC found that the detail of this approach was then discussed with the DPC Secretary, Mr Eccles. Minister Jennings gave evidence to IBAC that on 25 March 2016, Mr Eccles instructed Mr Bates, DPC Deputy Secretary Governance, Policy and Coordination, to meet with Minister Jennings to discuss the task of seeking an agreement for the EBA dispute. Mr Bates had joined the department earlier that week. Mr Jennings considered him well-suited for the role given his knowledge and experience. Mr Bates' background included costing EBAs at DTF and overseeing EBA negotiations for Victoria Police. In evidence to IBAC, Mr Bates stated that Mr Eccles told him words to the effect that matters should be kept very tight and that he was not to speak to anyone outside of DPC, including the Department of Justice, EMV and the fire services.

In his evidence, Mr Andrews could not recall the specific arrangements concerning the authorisation, but offered the following explanation:

> I expect I've – at some point I've said to him, 'You need to go and fix this. This needs to get fixed', and that's involved him [Mr Jennings], Deputy Secretary Bates and of course the Secretary of our department, Mr Eccles.

On Minister Garrett's involvement, Mr Andrews stated that:

> I am happy to concede that the Minister was not in the group, she was not involved in those negotiations, and indeed the fire services were not involved in those talks and that process. Yes, that seems clear to me.

Factors affecting the decision to shift responsibility for the negotiations

IBAC found that by late March 2016, the Premier had effectively lost confidence in Minister Garrett's ability to resolve the EBA impasse. In evidence to IBAC, Mr Jennings recalled the Premier stating that the negotiations were 'running off the rails'. Likewise, Mr Andrews gave evidence that relations between Mr Marshall and Minister Garrett had 'completely broken down'.

At this time, the Premier and Mr Jennings were also grappling with the internal consequences of the efforts to end the dispute. Mr Jennings told IBAC in evidence about Minister Garrett's proposal from late 2015 to negotiate the issue of wages directly with firefighters without the involvement of the union. Mr Jennings said that the Minister had been operating on the assumption that she had sufficient licence to implement the strategy, but that he considered it would have protracted the dispute. Mr Jennings told IBAC that although the Premier did not directly reference the proposal in their March meeting, the Premier had received feedback from caucus members who were unhappy with the Minister's proposal, which was viewed as 'provocative' and 'unproductive', and considered likely to take parties even further apart.

Mr Jennings described the government's position in April/May 2016 as, 'untenable', and recalled the decision at the time being that 'It is a political nightmare. It is an industrial nightmare. Get it fixed'.

When asked whether he could recall caucus members communicating their concerns, Mr Andrews responded:

> Not as such, Commissioner. But clearly no-one was pleased that things had dragged on for so long and had become so spiteful. So colleagues may have raised that with me. I think there was a very significant interest across the board in resolving these matters and moving them forward.

IBAC identified that the UFU decided not to go ahead with planned newspaper advertisements that were critical of the government in the lead-up to the April 2016 negotiations. On 2 April, Minister Jennings sent a text to the Premier, stating:

> You may realise that Peter Marshall has sent you a letter to the electoral office, as an indication of a willingness to settle – he has withheld critical newspaper ads this week and is gearing up to work through issues in secret.

When asked about the planned advertisements, Mr Jennings' evidence was that although the advertisements were 'not a terribly significant issue' in his mind, they might have been a concern to the Premier or his staff. When asked about this matter in his examination, Mr Andrews told IBAC that his motivation had been to get a deal so that the negotiations would not continue to the detriment of the fire services.

IBAC heard from Minister Jennings that the Federal Labor Opposition also wanted the dispute 'to go away'. In his evidence to IBAC, Mr Bates stated that he felt as though there was willingness from ministers or ministerial staff to have the EBA dispute resolved prior to the looming federal election. However, he couldn't recall who he heard this from, or what exact words were said. The Treasurer explained to IBAC that the dispute would have been a concern for the Federal Labor Opposition because the Federal Coalition Government might have used the issue for political advantage in the lead-up to the July 2016 federal election.

IBAC found that a month before the federal election, Mr Andrews was contacted by federal Labor MPs about the dispute. On 5 June 2016, Mr Jennings sent a text to Senator A that said:

> I'm only telling this so that you know ... For the last 48 hrs [federal MP], [federal MP], and [federal MP] have been ringing daniel asking him to back off ...

Consistent with this evidence, Mr Jennings recalled that at the time he had sent a text message to Senator A to tell them that their colleagues had been pressuring the Premier to resolve the dispute.

During his examination by IBAC, Mr Andrews was asked whether the upcoming federal election placed any pressure on him to resolve the issue. Mr Andrews stated that he did not believe it did.

In his evidence, Mr Andrews said that his actions had also been motivated by concern for public safety. Mr Andrews said he could remember being in Wye River following the devastating fires in late December 2015 and meeting with people who had lost everything. He recalled thinking that the matter needed to be resolved as he did not want another fire season where CFA staff were at the FWC instead of the fireground.

3.2.3 The April 2016 negotiations

Preparation for the negotiations

The evidence before IBAC is that prior to the commencement of the 6 April 2016 negotiations, six people within government were aware of the chosen approach: the Premier, Minister Jennings and his Parliamentary Secretary, the Premier's Chief of Staff, Mr Eccles and Mr Bates. Mr Bates recalled in evidence that Minister Jennings conveyed that the process was very confidential, and that both Mr Bates and Mr Jennings expected Mr Marshall to keep the process confidential.

As stated previously, in the week before the negotiations, the Premier was made aware that Mr Marshall had not gone ahead with planned critical newspaper ads that week and that Marshall was prepared to 'work through issues in secret'.

After negotiations commenced, Mr Jennings received a text from one of his advisors with a copy of a proposed UFU advertisement for his review. The text message noted that:

> Peter has agreed to soften the add [sic] further. Basically deleting that entire paragraph and making it a message to Victoria to make it more generic.

Mr Jennings gave evidence that the starting point for their negotiations was the agreed position of the CFA and UFU as presented to the FWC in late 2015. Mr Jennings said he believed the government's expectation of him was to help resolve the dispute quickly and, in doing so, ensure the EBA would comply with the Wages Policy. Mr Bates' evidence was that the work on the EBA previously undertaken by the CFA, IRV and Department of Justice did not factor into their negotiations.

The undisclosed negotiations

As the evidence set out below shows, Minister Jennings, Mr Bates and Mr Marshall – accompanied by a small team of UFU negotiators – met for the first time for negotiations on 6 April 2016. Negotiations were held over four separate days, with the first sessions held at a rented meeting space, and the final session on 12 April held in a hotel meeting room. Senator A – the senator who had reached out to Minister Jennings' Parliamentary Secretary – also attended as an intermediary.

In their evidence to IBAC, Mr Jennings and Mr Bates both acknowledged that these meetings occurred. Text messages sent by Minister Jennings to the Premier and his Chief of Staff also establish that the Premier was provided with updates as negotiations progressed. The Chief of Staff said to Minister Jennings via text message that, 'Daniel was asking about it a couple of times today, and I said you were progressing well'.

IBAC heard in evidence that Mr Bates similarly provided Mr Eccles with weekly updates. While in negotiations on 11 April 2016, Minister Jennings referred to being 'off doing my secret mission' and 'secret business' in text messages to staff in his office and the PPO.

During his examination, Mr Marshall was asked about the negotiations with Minister Jennings and Mr Bates. On being presented with evidence of the room booking in his name on 12 April 2016, Mr Marshall could not recall what the booking was about or who was in the room. He said the EBA was resolved at the FWC (in May 2016) and that any meeting with Mr Jennings would have arisen from that process. However, this is inconsistent with what Mr Marshall said in a lawfully intercepted phone call with a ministerial advisor on 22 March 2019: 'this agreement was negotiated with fuckin' Jennings in a back room. It was endorsed by fuckin' Andrews and Cabinet. So, the agreement's been right through Cabinet'.

Outcome of the undisclosed negotiations

On 12 April 2016 at 2.03 pm, Minister Jennings sent a text to the Premier, 'Handshake has occurred – it's done!', to which the Premier responded, 'Very good'.

At 7.25 pm on 13 April 2016, Senator A sent a photograph to Mr Marshall showing Minister Jennings and his Parliamentary Secretary smiling. A minute later, Mr Marshall responded with a photograph taken in the hotel meeting room where the negotiations were finalised, showing three people, who IBAC understands were the UFU negotiators, sitting with Senator A with full champagne glasses in hand and sparkling wine bottles on the table, toasting towards the camera. File information shows that the photographs were taken on the afternoon of 12 April 2016. After sending the photograph, Mr Marshall sent a series of text messages to Senator A, asking him to pass on his 'sincere gratitude' to the government on behalf of himself, the firefighters, executive and staff.

IBAC heard evidence from Minister Jennings and Mr Bates that they considered they had adequately acquitted the Premier's request to get an agreement that would resolve the dispute.

IBAC heard conflicting evidence about the specifics of the negotiated outcome. Mr Jennings' evidence was that the government did not concede any issues, whereas Mr Bates highlighted several areas where the government willingly made concessions in relation to some provisions as part of their negotiating strategy. Regarding the cost of the EBA, Mr Jennings' evidence was that there was no real difference in cost between the government's wages position as previously offered by Minister Garrett to the UFU and what was agreed at the conclusion of the April negotiations. Mr Bates gave evidence that some of the UFU's allowances claims, which had previously been rejected by the CFA on the basis that they were too costly, had been accepted during negotiations. Mr Bates said that he had been willing to concede these new allowances as they reflected a realistic appraisal of the costings, compared to the 'public rhetoric position' previously pushed by the government and CFA, which had exaggerated the costs. Mr Bates also said he considered it unlikely the clauses would be activated.

Mr Bates also identified health and safety as an area the government was prepared to move on, stating there was 'a willingness on our part to concede a bit more on provisions that we thought were reinforcing the union's role in protecting the health and safety of staff'.

With respect to the UFU, based on the evidence below, IBAC found that while the UFU made some concessions during the negotiations, the areas of primary concern to government (including, for example, the consult and agree clauses, and the clauses that the CFA identified as being non-compliant or potentially non-compliant with the *Equal Opportunity Act 2010* (Vic)) had not been addressed following the negotiations.

IBAC found that while the UFU did abandon its claim to broaden the general consultation clause to include an agree requirement, many specific consult and agree clauses continued to remain in the UFU's log of claims following the negotiations.[31] Likewise, with one exception, IBAC also found that the clauses identified by the CFA to be non-compliant with the *Equal Opportunity Act 2010* (Vic) (see section 2.2.3) were not amended as a result of the negotiations, with the exception of a clause which was affected by the general consultation clause.[32] In his evidence, Mr Jennings referred to the inclusion of a statement of intent to address the national employment standards and the limitations on women joining the workforce, and an agreement to work through those processes during the life of the EBA.

IBAC's findings regarding the UFU's concessions are consistent with comments made in the Fair Work Commissioner's Final Recommendation on the EBA on 1 June 2016. The Fair Work Commissioner observed:[33]

> The most recent claim or proposal from the UFU has not changed in any significant particular since it has been before me [November 2015] and presumably for some time prior to that.

31 This finding is based on a comparison of draft versions 17.1 (pre-April 2016 negotiations) and 17.2 (post April 2016 negotiations) of the draft CFA EBA.
32 This finding is based on a comparison of the clauses identified as non-compliant by VEOHRC in its 31 December 2015 compliance review of version 17.1 (pre-April 2016 negotiations) of the draft CFA EBA, with the clauses in version 17.2 (post April 2016 negotiations). This analysis revealed only one clause had been amended.
33 Further information about the FWC's Final Recommendation is set out at Appendix B.

3.2.4 Events prior to ERSC consideration of the CFA EBA

IBAC found that following the negotiations, preparations were made for the revised log of claims to be brought back within regular processes ahead of it being presented to ERSC for endorsement. This sub-committee of Cabinet is responsible for deciding which initiatives government will fund and how much money would be allocated to them.

On 13 April 2016, Mr Marshall presented the log of claims to the Premier in a meeting, after which it was disseminated to relevant departments and agencies for review as a 'UFU proposal'. As Mr Jennings' and Mr Bates' negotiations with the UFU were not disclosed, reviewers were unaware of the document's provenance. Based on the evidence set out below, IBAC found that between this meeting and ERSC on 19 April 2016, public sector briefing and review processes were fast-tracked or otherwise managed to maximise the likelihood that ERSC would endorse the 'UFU proposal'.

Mr Marshall's meeting with the Premier

On 13 April 2016, the day after negotiations concluded, Mr Marshall met with the Premier in his office at 1 Treasury Place. IBAC heard evidence from Mr Jennings that he had briefed the Premier before the meeting. Mr Jennings told the Premier that the UFU conceded ground or made concessions, including on contentious issues, and that at the meeting Mr Marshall would present him with 'a proposal for the government to consider to resolve the dispute'. After briefing the Premier on the negotiations, Minister Jennings sent a text to Senator A who had attended the negotiations: I've walked daniel [sic] through the material– he's very happy ...'

A PPO advisor (PPO advisor C) also attended the 13 April 2016 meeting but was unaware of Minister Jennings and Mr Bates' negotiations with the UFU. IBAC's view is that the meeting between Mr Marshall and the Premier was staged and that the purpose of the PPO advisor C's attendance at the meeting was to have a person who was unaware of the negotiations witness the handing over of the 'UFU proposal' to the Premier and to deliver a copy to Minister Garrett.

In their evidence to IBAC, PPO advisor C said that the Premier's Chief of Staff had told them that some work had been going on in the background and that Mr Marshall would bring documents that showed the UFU's position had moved. PPO advisor C stated that the meeting was held at the Premier's office at 1 Treasury Place and that during the meeting Mr Marshall handed them a document and the Premier advised Mr Marshall that they would consider the revised EBA.

In his evidence to IBAC, Mr Bates was asked to comment on a letter that referred to the EBA as having been proposed by the UFU to the PPO in April 2016. Mr Bates said:

> The development of the draft agreement was led by me ... if there was a presentation of the agreement to the Premier's Office I would categorise it as ceremonial.

Mr Bates' evidence supports IBAC's view that the meeting between Mr Marshall and Mr Andrews was not genuine but staged.

In his evidence, while Mr Andrews remembered the meeting, he could not recall Minister Jennings briefing him beforehand. He did recall discussions in which Minister Jennings advised him that common ground had been found and that the EBA was a fair and reasonable way forward. Mr Andrews was questioned about the extent to which the meeting involved discussion of matters in dispute in the EBA such as provisions regarding part-time work. He replied that the meeting:

> was not to talk about those sorts of matters in that level of detail. That's not my recollection. It was to give, if you like, an assurance that we were fair dinkum, that we were genuine, that we were good faith actors.

Mr Andrews further said that if the union had not given any ground, then he doubted the meeting would have been arranged. Mr Andrews said that at the time he had the view that some kind of agreement had been struck and significant progress made.

During his examination, Mr Marshall told IBAC that from his recollection there had been no deal, that the meeting with the Premier had been to commit to ending the dispute, a process that only began following the meeting. He said that following the meeting the matter was referred to a bureaucrat – Mr Bates – who Mr Marshall said, was 'a new face to me'.

In his response to a draft copy of this report, Mr Marshall continued to maintain that he had no recollection of any meeting to hand over a document that reflected finalised or concluded negotiations. Mr Marshall referred to UFU emails to Mr Bates from 13 April to 19 April 2016 which he claimed reflected ongoing negotiations. Mr Marshall told IBAC that he met with the Premier once and that during this meeting he provided the Premier with the UFU's log of claims. Mr Marshall maintained that it was after this meeting that the Premier appointed Mr Bates and Mr Jennings to take over negotiations. Mr Marshall maintained that he had not met Mr Bates prior to meeting with the Premier.

Mr Marshall's response is inconsistent with other evidence obtained by IBAC including Mr Marshall's communications at the time. Notwithstanding Mr Marshall's assertions that UFU emails reflected ongoing negotiations, the totality of the evidence shows that a substantive agreement had been struck. As detailed later in section 3.3.2, during the conciliation process, Mr Marshall sent text messages to Minister Jennings, Minister Jennings' Parliamentary Secretary and the Premier reminding them of the undisclosed deal entered into in April and accusing the government of doublecrossing the UFU by departing from the deal. As previously detailed (including in section 3.2.3), on 22 March 2019 Mr Marshall said in a phone call with a ministerial advisor that the EBA had already been negotiated in a 'back room' and endorsed by Cabinet. In this phone call, Mr Marshall became increasingly frustrated at the lack of progress with the 'UFU proposal' and refers to his agreement with Andrews multiple times specifying 'that agreement was done almost 18 months ago'.

In addition to Mr Marshall's own communications, Mr Bates' evidence to IBAC supports IBAC's finding that Mr Marshall had a firm belief that he had a deal with government. As detailed later in section 3.3.2, Mr Bates recalled that Mr Marshall was agitated during the conciliation process as he understood the agreement to be a 'done deal'.

Minister Garrett and the fire services' response to the 'UFU proposal'

IBAC found that following the Premier and Mr Marshall's meeting on 13 April 2016, Minister Jennings and the Premier sought for the matter to come before ERSC within the next few days. Mr Jennings advised Mr Bates that DPC would bring forward a submission on the EBA to ERSC and that the PPO would engage Minister Garrett to be a co-signatory.

Accordingly, after his meeting with Mr Marshall the Premier met with Minister Garrett, during which the Minister was presented with the 'UFU proposal'. PPO advisor C was again present. The PPO advisor recalled telling Minister Garrett that they were going to get DPC to analyse where there had been movement on the EBA. PPO advisor C provided the Minister with a copy of the 'UFU proposal' and also provided a copy to Mr Bates for DPC's review. In her evidence, Ms Garrett recalled the Premier telling her, '... if Pete's lying and this isn't what he says it is ... then he can fuck off'. IBAC considers this statement to be inconsistent with Mr Andrews' knowledge of the matter.

When she gave evidence to IBAC in May 2019, Ms Garrett was unaware of the origins of the 'UFU proposal'. In his evidence to IBAC, Mr Bates also acknowledged that she would not have been aware of the provenance of the document. Mr Jennings' evidence was that Minister Garrett was never going to be told the facts about the 'UFU proposal' unless 'at the determination of the Premier'. Mr Andrews accepted in evidence that people may have viewed the 'UFU proposal' differently if it had been conveyed to them as something government had decided to implement rather than a 'proposal' to consider.

Ms Garrett gave evidence to IBAC that after she received the 'UFU proposal', members of her office, the CFA, MFB and EMV met to review the EBA. Ms Garrett said that their conclusion was that it was as bad as the previous log of claims, and in some parts worse due to 'long forgotten things' being 're-agitated'. She also described the document as 'hundreds of pages long', containing 'convoluted language' and including cross-references that appeared innocuous but opened a 'whole another [sic] door'.

According to Ms Garrett, when she subsequently met with the Premier to discuss her concerns, the Premier said that he 'needed me to do these agreements and he needed me to sell them'. Ms Garrett said that enormous pressure was put on her to support the 'UFU proposal', including from the Premier. In their evidence to IBAC, PPO advisor C recalled that when they raised Minister Garrett's concerns with the Premier, they were told to wait and see what the DPC analysis showed.

On 18 April 2016, PPO advisor C sent a document prepared by DPC to Minister Garrett's office. The document, titled 'Proposed fire services enterprise agreements – United Firefighters Union concessions', included a table listing items and clauses along with comments identifying where there had been movement from the UFU.

In evidence to IBAC, an advisor in Ms Garrett's office recalled providing an assessment of the document back to the PPO, which communicated that 'it was still skewed one way. It was still tilted heavily towards what the union wanted'. Similarly, the CFA CEO told IBAC that the claimed UFU concessions amounted to 'nothingness', because in their view the concessions were for things that were not in contention or were trivial.

Lack of independent DPC advice

IBAC found that following the undisclosed deal, Mr Bates, assisted by officers in DPC, drafted a submission for the Premier to bring to Cabinet providing departmental advice on the EBA. It was clear from Mr Bates' evidence before IBAC that he did not declare his direct involvement in the undisclosed negotiations at the time of preparing the draft submission, nor seek to remove or distance himself from the process. This meant Mr Bates was leading the evaluation of a proposal he had helped to formulate.

In his examination by IBAC, Mr Bates was asked whether it was part of his function in drafting the submission to revisit the question of whether the terms in the EBA were appropriate, or if he was proceeding on the basis that having reached a deal with Mr Marshall, the terms in the proposed EBA were appropriate subject to anything someone later said. Mr Bates agreed that he was proceeding on the basis that the terms were appropriate.

Mr Jennings was asked in evidence about the appropriateness of Mr Bates conducting an analysis of an agreement that he himself had negotiated and partly written. Mr Jennings said that had he been the DPC Secretary, he would have 'firewalled' Mr Bates from the process. However, the evidence indicates Minister Jennings was involved in the initial tasking to Mr Bates. On 12 April 2016, Minister Jennings sent the following text message to Mr Eccles:

> The premier will be meeting with the UFU late tomorrow afternoon. I've just said to Tony Bates that DPC should be formally asked to prepare the Cabinet sub for ERSC which we will schedule for Monday. Tony and I can write it for Daniel's signature ...

IBAC heard evidence from one of Minister Garrett's advisors that they had requested a meeting between the Minister and the Premier, to discuss Ms Garrett's refusal to sign a Cabinet submission regarding the 'UFU proposal', but their request was rejected. Mr Andrews' evidence was that he had a general awareness of Minister Garrett's concerns about the EBA but had the view that she was acting as a 'conduit and messenger for the fire services' and not providing independent feedback.

Treasury review of the EBA

IBAC found that Mr Jennings and members of the PPO sought to overcome Treasury resistance to the 'UFU proposal' prior to its tabling at the ERSC. Late on 13 April 2016, Minister Jennings sent a text to PPO advisor C to state that DPC were doing an urgent assessment and needed DTF to validate their work 'ASAP'. On the morning of 14 April, Minister Jennings sent a text to the Premier's Chief of Staff, stating '... relating to our secret mission – the Treasurer and his office have to be told that their task is to facilitate agreement today not spear it ...' Subsequent messages from Minister Jennings to Mr Bates refer to 'nailing down the budgetary cover a bit tighter' and having the Treasurer 'cleared away' by the PPO.

Both Mr Jennings and Mr Andrews said in evidence that Treasury was typically reluctant to spend money, often with a starting position to oppose expenditure. When asked during examination whether he was working with Treasury and the Treasurer to get them over the line, Minister Jennings said that he had no difficulty with Treasury acquitting its responsibilities, and his only issue was the speed and fulsomeness of what they were doing.

IBAC heard evidence from a Treasury official that Treasury staff were required to conduct the analysis in a rush in preparation for briefing the Treasurer ahead of the ERSC meeting. The Treasury official gave evidence that the costing exercise was complex. For example, it was difficult to determine the likelihood of allowances being activated and their frequency. The Treasury official told IBAC that Treasury officials ultimately concluded that the 'UFU proposal' would have cost implications which exceeded those provisioned for under the Wages Policy.

Treasury officials met with the Treasurer to discuss the matter. The Treasury official described the Treasurer as 'very engaged' in the discussion and that he appreciated their full and frank advice. However, towards the end of their meeting, the Treasurer left the room to take a phone call and upon his return, the meeting ended sharply. The Treasury official recalled that although they did not hear the phone call or know who it was from, they assumed that their advice was no longer relevant as a decision had been made to support the 'UFU proposal'. While this was the Treasury official's impression of what happened, the Treasury official accepted in their evidence that they could not know the Treasurer's state of mind at the time.

In his evidence, the Treasurer accepted that he had been aware that Treasury had engaged in an urgent costing exercise of an unusual kind. He also recalled being unhappy with the process being 'short-circuited'. The Treasurer told IBAC that though things moved quickly, the only pressure applied to him was to resolve the issue 'at some point'. When shown Minister Jennings' text to the Premier's Chief of Staff, that the Treasurer's task was to facilitate agreement, not spear it, the Treasurer's evidence was that he did not receive that tasking, and that if he had, due diligence would have still been done.

IBAC does not have access to the relevant Cabinet documents and is therefore unable to conclude whether Treasury's view was ultimately provided to other members of ERSC.

Pressure placed on the Emergency Management Commissioner

IBAC found that in the lead-up to and following the April 2016 ERSC meeting on the proposed EBA, the Emergency Management Commissioner (the head of EMV) was pressured to retract a letter of objection to the EBA and replace it with a letter stating that their concerns had been addressed. The Emergency Management Commissioner served from July 2014 until August 2018 and had been involved in initial EBA negotiations following the 2014 election.

On 18 April 2016, the eve of the ERSC meeting, the Emergency Management Commissioner wrote to Minister Garrett setting out their objections to the CFA EBA ('UFU proposal'). The letter stated that, 'the agreement as presented is discriminatory, has significant operational efficiency and capability impacts and therefore has the potential community safety impact [sic]'. The Emergency Management Commissioner further wrote that the CFA EBA could 'make it extremely difficult for CFA management to effectively manage the direction of the fire service', and that the CFA and MFB Chief Officers agreed.

On 20 April 2016 (two days later), the Emergency Management Commissioner withdrew the letter and provided a new letter. It noted that the issues raised in the first letter had now been addressed and that the prior letter should be retracted.

In evidence to IBAC, the Emergency Management Commissioner recalled being told by the Secretary of the Department of Justice that their first letter had attracted attention from Mr Eccles about the appropriateness of the wording. The Commissioner stated that things got 'very tense' about whether they should retract the letter and that 'the Secretary of DPC tried to push in on top' of them. When asked why Mr Eccles sought the retraction, the Commissioner said that it was because the letter 'wasn't consistent with where the government wanted to be'.

In their evidence to IBAC, the Secretary of the Department of Justice confirmed that they had a recollection of Mr Eccles telling them that there was an issue with a particular part of the Emergency Management Commissioner's initial letter, and that they subsequently raised the issue with them. The Secretary noted Mr Eccles' feedback was phrased in a way that conveyed that there was a problem that needed to be addressed and that they should speak to the Emergency Management Commissioner to get it addressed.

In his evidence to IBAC, Mr Eccles stated he had no recollection of a direction being issued by the Secretary to the Emergency Management Commissioner to alter correspondence. When asked if such a direction would have been inappropriate, Mr Eccles said that '[i]t's never appropriate' to direct someone to change their view or position.

3.2.5 ERSC consideration of the CFA EBA in April 2016

Lead-up to ERSC meeting

The ERSC meeting to consider the 'UFU proposal' was scheduled for 18 April 2016. Late on the afternoon of 18 April 2016, a colleague sent a text to Mr Jennings stating that Treasury was 'briefing against' the submission. Minister Jennings subsequently sent text messages to the Treasurer, Mr Bates and Mr Eccles stating that the 'Premier wants the meeting to proceed ... To agree to the agreement in principle overnight for detail costings'.

Ms Garrett told IBAC in evidence that ahead of the ERSC meeting she refused to co-sign the Cabinet submission because she could not in good conscience endorse an agreement which was opposed to what she swore in her Ministerial oath – to act in the interests of the Victorian people and good governance.

Evidence before IBAC indicates that the scheduled ERSC meeting was cancelled and rescheduled for the following day as the government was still facing internal resistance to the proposed EBA. Text message exchanges during the evening of 18 April 2016 between the Premier and Minister Jennings, and Senator A and Minister Jennings, reflect attempts to overcome this resistance. They also reveal attempts by Minister Jennings and Senator A to manage Mr Marshall's frustration at the lack of a timely resolution regarding the EBA ahead of a union meeting scheduled for the next morning.

On 19 April 2016, the Premier met with the Treasurer prior to the ERSC meeting. The Treasurer gave evidence that he understood from the meeting that the Premier was asking him to facilitate the consideration and approval of the proposed EBA. The Treasurer told IBAC that his position subsequently changed from one of 'direct opposition' to one of 'how can we refine and improve this'. When asked how the meeting changed his mind, the Treasurer said that while he had expressed concerns about the EBA, he ultimately served at the pleasure of the Premier and that the Premier was right that these matters needed to be resolved.

ERSC consideration of the 'UFU proposal'

In April 2016, the Premier, the Special Minister of State and the Treasurer were members of ERSC and attended the ERSC meeting on 19 April 2016. The 19 April 2016 ERSC meeting was also attended by Minister Garrett, given her responsibility for the CFA EBA, and two other ministers.

The evidence before IBAC is that following the meeting, the proposed CFA EBA proceeded through to the next stages of the bargaining process. Mr Andrews described the ERSC meeting to IBAC as 'a critical meeting', which was 'very important in formalising the government's position'. Likewise, Mr Jennings accepted in his evidence that the meeting was a 'profound step' and said that a decision reached through ERSC was treated as a 'whole of government' decision.

IBAC found that of those in attendance at the ERSC meeting, only the Premier and Minister Jennings were aware of how the proposed CFA EBA came into being. In his examination by IBAC, Mr Jennings was asked to identify who was aware of the process that took place before the ERSC meeting. Aside from the Premier, Mr Jennings did not identify any of the ministers in attendance at the ERSC meeting as being aware of the undisclosed deal.

In his examination by IBAC, it was put to Mr Andrews that aside from those who had been involved in the negotiations, no one, including the Treasurer, was aware that undisclosed negotiations had taken place when the matter went before ERSC. Mr Andrews did not dispute this, however, he said that he thought that by the time ERSC considered the 'UFU proposal' on 19 April 2016, all members of ERSC 'would have had a sense of what had got us to that point'. However, he subsequently clarified that the Treasurer was not aware of the negotiations that had taken place.

In a further examination by IBAC, it was put to Mr Andrews that one of the consequences of the course of action he followed to resolve the EBA dispute was that the negotiations held with Mr Marshall were concealed from members of Cabinet. Mr Andrews did not dispute this assertion.

When asked by IBAC if it was common for it to be concealed from Cabinet ministers that an agreement had been struck with government, Mr Bates agreed that it would be unusual.

Mr Jennings said in evidence that the method by which agreements are negotiated is never discussed at Cabinet and therefore their limited disclosure to ERSC members was 'not out of kilter with what happens time and time again of the way in which agreements are struck'. Irrespective, the approach employed concealed the existence of the undisclosed negotiations and obscured the fact that Mr Marshall had been given an indication that the government would implement the EBA he had agreed with Minister Jennings.

3.2.6 Policy and procedure

IBAC found that over the relevant period (March to April 2016), public officers acted contrary to several policies, codes and conventions. Further detail about the corruption risks posed by their conduct and opportunities to address them is provided in chapter 4.

The Public Sector Industrial Relations Policies

IBAC found that in authorising or undertaking the negotiations to the exclusion of other key government parties, the Premier, Minister Jennings and Mr Bates acted contrary to the PSIRP. The evidentiary basis for this is set out as follows.

The PSIRP are the set of policies that guide public sector enterprise bargaining. They set out the roles and responsibilities of those involved, the expectations for how negotiations should proceed, and the government's Wages Policy – the fiscal constraints governing the wages and conditions that can be agreed by government in an EBA.

The PSIRP state that negotiations should be based on integrity, honesty, courtesy and information sharing.[34] With respect to roles and responsibilities, the PSIRP state:

> Departmental Secretaries are responsible for the overall management of industrial relations issues within their department and portfolio agencies (and associated projects), including application of the industrial relations policies.[35]

Contrary to the PSIRP, the government parties charged with responsibility for the negotiations – the Secretary at the Department of Justice and the CFA – were excluded from them. Nor were they told of the existence of the undisclosed negotiations or that a deal had been reached with the UFU on acceptable terms. Further, under 'roles and responsibilities', the PSIRP state that:

> While Ministers will maintain constructive relationships with unions and employees to facilitate successful industrial relations outcomes, they remain outside formal negotiations.[36]

Minister Jennings' participation in the undisclosed negotiations was contrary to this prescription (see 3.2.3).

Section 4.2 discusses the implications of acting contrary to policy, including how it undermined safeguards designed to protect the public interest and mitigate improper influence.

Codes of conduct

The Ministerial Code in place in April 2016 required that, when taking decisions on or in connection with their official capacity, ministers 'must do so in terms of advancing the public interest – that is based on their best judgment of what will advance the common good of the people of Victoria through honest, efficient and effective government'.[37]

Mr Andrews gave evidence that by mid-2016 he considered the industrial dispute to be intractable and 'absolutely a significant issue'. He believed it had gone on for a 'very, very long time' and it needed to be resolved in the interest of public safety. He acknowledged that his position had changed, stating:

> To say that my position changed is absolutely correct. We got an agreement. That meant compromise. Of course our position changed, and it is the government's prerogative for our position to change, otherwise … we certainly wouldn't get agreements done that have been on the shelf the subject of a spiteful, bitter distraction away from keeping people safe for more than 1150 days …

Mr Andrews noted that the relationship between Minister Garrett and the union had deteriorated, that he considered that the Minister did not have an effective strategy for resolving the dispute, and that her inflexibility compromised her ability to play a useful role in achieving a resolution.

34 Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Department of Economic Development, Jobs, Transport and Resources, Vic Gov, Victoria, p 6.
35 ibid., p 4.
36 ibid.
37 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.1. This code of conduct is the version in place as at April 2016. An updated Ministerial Code of Conduct was published 1 December 2023.

In evidence, Mr Andrews stated that at some point, he had said to Minister Jennings, 'You need to go and fix this. This needs to get fixed'.

Mr Andrews testified that it was his subjective judgment that authorising Minister Jennings to become involved to break the impasse was necessary to advance the public interest. Minister Jennings gave evidence that he believed that he was acting in the public interest by doing so.

However, the Ministerial Code also requires that ministers do so 'through honest, efficient and effective government' and that they 'observe fairness in making official decisions – that is, to act honestly and reasonably, with consultation as appropriate to the issue ...'.[38] Neither Mr Andrews nor Minister Jennings disclosed to the responsible minister, Minister Garrett, the fact that Minister Jennings had taken over the CFA EBA negotiations. This was contrary to their obligations under the Ministerial Code as Ms Garrett was left with the false impression that Mr Marshall had of his own volition presented the government with an updated proposal for the CFA EBA (see section 3.2.4).[39]

IBAC also found that information subsequently released into the public domain about the CFA EBA negotiations did not present an accurate picture of events. Despite his obligations under the Ministerial Code to act honestly and to take all reasonable steps to not knowingly mislead the public,[40] IBAC obtained evidence that on 5 June 2016, Minister Jennings discussed via text with Mr Marshall the 'lines' that Mr Marshall proposed to say about the EBA in a radio interview. The proposed lines did not mention the undisclosed deal, but rather posited that Mr Marshall had met with the Premier because he had so requested after placing advertisements in major print media asking to resolve the dispute. Minister Jennings replied to Mr Marshall, 'Great, that's really good'.

On 17 June 2016, Mr Marshall took part in the radio interview, during which he broadly stuck to the lines he had run past Mr Jennings. In the interview, Mr Marshall was asked about his meeting with the Premier. Mr Marshall said that the meeting had come about after he put advertisements in the newspaper saying that firefighters wanted the dispute resolved. During the same interview, it was put to Mr Marshall that he had told UFU members that a deal had been done, without the knowledge of Minister Garrett. Mr Marshall rejected the suggestion.

In evidence, Mr Jennings said that in responding to Mr Marshall's proposed lines for the interview, he was responding to the placatory things about volunteers that Mr Marshall had proposed to say, and the conciliatory nature of his message, rather than whether his description of his meeting with the Premier was complete or not. Mr Jennings gave evidence that the content of what Mr Marshall proposed to him, and subsequently presented to the media in the interview, was not a complete account of the events. After being pressed on the issue further, Mr Jennings accepted that the content was 'misleading'.

IBAC also found that the failure of Mr Bates and Mr Eccles to disclose the negotiations to key stakeholders outside of DPC was contrary to key clauses in the Public Sector Code of Conduct. Under clause 3.1 of the Public Sector Code of Conduct, Mr Bates and Mr Eccles were required to act with integrity by being honest, open and transparent in their dealings.[41] IBAC found that their actions were contrary to this obligation as they did not disclose the negotiations to other key stakeholders outside DPC nor the fact that they had reached a deal with the UFU (see section 3.2.4). IBAC also found that in failing to disclose the negotiations in the draft Cabinet submission, the pair fell short of their obligation under clause 5.4 to maintain accurate and reliable records to allow for appropriate scrutiny.[42]

38 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.2 (ii). This code of conduct is the version in place as at April 2016.
39 In particular, see section 3.2.4 'Minister Garrett and the fire services' response to the 'UFU proposal'.
40 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.4. This code of conduct is the version in place as at April 2016.
41 Victorian Public Sector Commission 2015, *Code of Conduct for Victorian Public Sector Employees*, 1 June 2015, clause 3.1.
42 ibid., clause 5.4.

In their examinations by IBAC, Mr Andrews, Mr Jennings and Mr Bates provided varying explanations as to why the negotiations were not disclosed to key stakeholders, and why relevant parties were excluded from them.

In his examination by IBAC, Mr Andrews was asked if it was a deliberate choice to exclude Ms Garrett from the negotiations. Mr Andrews answered, 'I expect it was'. He noted that the relationship between Ms Garrett and the union had become 'dysfunctional' and that he considered 'she could play ... no useful role in resolving this matter'.

In his examination, Mr Jennings was asked whether he understood the obligation to engage in enterprise bargaining in an open and transparent manner. He responded:

> My justification for keeping it secret [the negotiations], apart from the fact that this was the expectation of the Premier, was also ... the toxic environment in which this is occurring ...

Mr Jennings said there were many persons within government operating with 'mischievous intent' and who had a 'vested interest in either maintaining a dispute or doing damage to the government'.

In his evidence, Mr Bates said that he assumed that the reason for not engaging with the fire services during the undisclosed negotiations was due to concerns about material being leaked to the media or to the Opposition. He also noted that there were concerns that the CFA was not interested in reaching an agreement.

In relation to the Cabinet submission on the 'UFU proposal' drafted by Mr Bates, IBAC found that Mr Bates acted contrary to his obligations under the Public Sector Code of Conduct to provide frank and impartial advice. Under clause 2.1 of the Public Sector Code of Conduct, when advising government, public servants are obligated to provide advice in a 'frank, impartial and timely manner'. The clause also requires that public servants 'do not withhold relevant information from government'.[43] As detailed in section 3.2.4, contrary to these obligations, Mr Bates did not provide an impartial analysis of the 'UFU proposal', but rather a succinct summary of the agreement he was involved in negotiating.

IBAC considers that it was incumbent on those involved to manage the politically fraught bargaining process in a way that was still consistent with proper process and their obligations to the public and their colleagues. As is outlined in chapter 4, their actions were not without consequence. The undisclosed deal gave Mr Marshall significant leverage over the course of subsequent negotiations, allowing him to continually pressure the government to honour his undisclosed deal under threat of further industrial action and public disclosure of the April EBA negotiations (see sections 3.3–3.4).

43 Victorian Public Sector Commission 2015, *Code of Conduct for Victorian Public Sector Employees*, 1 June 2015, clause 5.4.

Westminster conventions

The Premier's decision to authorise Minister Jennings to take over the CFA EBA negotiations, without the knowledge of Minister Garrett, was contrary to the Westminster convention of ministerial responsibility.[44] This was because Parliament did not have line of sight as to who within government actually had responsibility for the negotiations. Section 4.2.1 discusses this conduct in further detail, including how it undermined public accountability over this period.

IBAC also found that the misrepresentation of the deal as a 'UFU proposal' undermined collective Cabinet decision making. The Cabinet Handbook sets out the key roles and responsibilities and procedures governing Cabinet processes.[45] It notes that in line with Westminster tradition, though Cabinet is not established by statute, it is the body through which significant government decisions are determined through confidential debate on proposals and the exchange of a variety of opinions and views. The Handbook details the Cabinet conventions that exist to support this process, the first of which is the convention of collective responsibility:

> Cabinet decisions are collective and binding on all Ministers as government policy. Accordingly, all Ministers give their support in public debate to the collective decisions of Cabinet.[46]

Given the need for all attending ministers to be able to contribute to robust deliberation, it is crucial that ministers be accurately and fully informed about matters before them.

Based on the evidence set out in section 3.2.5, IBAC found that the Premier and Minister Jennings did not disclose that the EBA under consideration was not a 'UFU proposal', but rather the outcome of an undisclosed deal with the UFU, and that an indication had already been given to Mr Marshall that the government was willing to progress that version of the EBA.[47] This undermined the very purpose of collective decision making as attendees were required to agree to a whole-of-government position on the matter without having the information necessary to make an informed decision.

3.3 Finalisation of the CFA EBA (May–August 2016)

3.3.1 Overview

Following the ERSC appraisal of the 'UFU proposal' on 19 April 2016, Minister Garrett and the CFA were convinced to return to the FWC for conciliation overseen by the same Fair Work Commissioner. As set out below, IBAC found that the government appreciated some of the objections that the CFA and Minister Garrett held about the EBA, particularly their concerns about the veto clauses and compliance with the *Equal Opportunity Act 2010* (Vic). Minister Jennings, Mr Bates and others sought to make minor modifications to the draft EBA, both during and after the FWC proceedings, to bring the fire services onside and to resolve the dispute. However, as set out in the evidence below, IBAC found that while some modifications were made to the EBA, Mr Marshall resisted attempts to make material changes to the EBA in relation to key issues such as the 'consult and agree' requirements, instead demanding that his deal be honoured.

As set out below, following the undisclosed negotiations, Mr Marshall was able to leverage the undisclosed deal to pressure the government, including by threatening industrial action and public disclosure of the undisclosed negotiations. Members of the government subsequently prioritised the need to limit political risk and hold onto the UFU's support (see sections 3.3–3.4).

Following the FWC proceedings, the government pressed forward with the draft CFA EBA and removed or otherwise managed opposition to its implementation. When faced with the prospect of being forced to back an EBA that they were opposed to, Minister Garrett resigned (see section 3.3.3).[48] The CFA Board was dismissed, and a new Board was appointed through an opaque and non-competitive process. Ultimately, while the new CFA Board approved the draft EBA, it did not advance due to subsequent changes to the FW Act that needed to be considered by the FWC before an EBA could be approved.

44 Ministerial responsibility refers to the duty that each government minister has to be individually responsible to Parliament, and ultimately the people, for activities conducted by themselves or any government department they administer. See: *Comcare v Banerji* (2019) 267 CLR 373 at [60], [146], [148]–[149] (per Gordon J); Winterton, *Parliament, the Executive and the Governor-General* (1983) at pp 78–79.
45 Victorian Government 2015, *Cabinet Handbook*, Department of Premier and Cabinet, Melbourne, pp 7–8.
46 ibid., p 6.
47 In particular, see section 3.2.5, 'ERSC consideration of the 'UFU proposal'.
48 In particular, see section 3.3.3, 'Minister Garrett resigns'.

IBAC considers that, while the conduct identified in section 3.3 may be capable of enabling, facilitating or resulting in corrupt conduct, IBAC could not establish that the identified conduct met all required elements to make findings of corrupt conduct under the IBAC Act.

3.3.2 Return to the FWC for conciliation

The FWC is a Commonwealth body and its commissioners are Commonwealth officers. While the conduct of Victorian public officers in communicating with the Fair Work Commissioner has been explored, IBAC does not purport to impeach, question or otherwise examine the truth, motive or intention of the FWC or any of its commissioners.

Although the draft CFA EBA was endorsed by ERSC on 19 April 2016, Minister Garrett and the CFA remained opposed to it. However, the government needed their support to progress it: the CFA Board was required to approve the EBA before it could go to a vote of career firefighters, and in the event the Board did not approve it, the Minister could be called upon to use her powers of ministerial direction to order for them to do so.[49]

Based on the evidence set out below, IBAC found that the government engaged intermediaries to convince Minister Garrett and the CFA CEO to return to the FWC. In her evidence to IBAC, Ms Garrett told IBAC that a federal Labor Senator (Senator B) reached out to her and tried to persuade her to progress the agreement at the FWC. Ms Garrett gave evidence that Senator B told her that she was 'ruining [her] career' and that returning to the FWC would assist because 'everybody can say that the independent umpire's made this decision and there's nothing more you can do'. Similarly, the CFA CEO said they felt that the government was trying to force the CFA to sign the EBA, rather than merely advocating a position to them. In late April 2016, Mr Bates sent a text to Minister Jennings to advise him that he had spoken to an 'influential common friend' who would try to call the CFA CEO to encourage them to participate in the Fair Work process.

In evidence to IBAC, Mr Bates recalled Mr Marshall's response when it was suggested that the matter return to the FWC because of CFA resistance to the draft EBA:

> I think he indicated that – that he felt that the deal that we had – that he had done with myself and with Minister Jennings was the deal and that he wouldn't be conceding anything further at the Fair Work Commission.

FWC proceedings

In May 2016, the CFA agreed to return to the FWC to resume conciliation. Conferences were held at the FWC with representatives from the UFU, CFA, IRV and DPC in attendance during various sessions. The version of the EBA being considered was the 'UFU proposal' of 13 April 2016.

Mr Marshall's insistence on his deal

IBAC found that Mr Marshall resisted attempts to materially change the draft EBA, particularly with respect to the veto clauses. Mr Marshall did so on the basis that the government ought to honour the deal it made with him during the April negotiations.

For instance, on the morning of 23 May 2016, Mr Bates sent a text to Minister Jennings to share that he had 'hinted to Peter several times that he will need to do something on the "veto"'. Mr Bates sent a further text message several hours later to warn that Mr Marshall was refusing to attend the FWC that day and was threatening to walk away and start alternative action. Mr Marshall sent text messages to Minister Jennings and his Parliamentary Secretary throughout the day stating, 'you don't dog on agreements' and that 'the UFU has been double crossed by Andrews'. He also sent a text to the Premier, stating, 'I entered into a [sic] honest arrangement with you over a month ago'. IBAC did not find evidence that the Premier responded. When asked about the text message in his evidence to IBAC, Mr Andrews said that he did not have a memory of the message.

49 *Country Fire Authority Act 1958* (Vic) (Authorised Version incorporating amendments as at 23 September 2015) s 6A.

Mr Bates attended several FWC sessions as a government observer. He recalled in his evidence that later on 23 May he had been in a room with CFA staff and an IRV delegate but could hear Mr Marshall's raised voice from the adjoining room where the Fair Work Commissioner was meeting with Mr Marshall and other UFU representatives. Mr Bates was eventually asked to join them in the room and see the Fair Work Commissioner. Mr Bates told IBAC that Mr Marshall was 'agitated' and 'was trying to put a view that he felt he had an entire agreement and didn't want to reopen any clauses'. Mr Marshall wanted Mr Bates to confirm to the Fair Work Commissioner that it was a 'done deal'. Mr Bates said he told the Fair Work Commissioner that he had negotiated the deal, and it had been through Cabinet, but that the government was open to reaching further compromises through the mediation process. The Premier sent a text to Minister Jennings that evening, on 23 May 2016, to ask how the mediation was progressing. Minister Jennings responded:

> At 11 am he was convinced you were a treacherous c*** and I was a fucking idiot ... By lunchtime he was giving me the benefit of the doubt—then irv/dpc turn up at Fair work and ask him to concede matters when the CFA haven't conceded anything and have been duplicitous in putting issues back in the table ... he will give us the benefit of the doubt, but probably not for much longer. We need ERSC to get a report from IRV tomorrow after the fair work hearing and then to lock in a direction to CFA to settle.

On another occasion on 26 May 2016, Mr Bates sent a text to Minister Jennings reporting that the CFA had suggested new wording for a dispute resolution clause which would effectively introduce a deadlock-breaking mechanism to avoid endless consultation if agreement could not be secured. Mr Bates described the clause as 'very good'.

However, on 30 May 2016, the proposed clause provoked a strong reaction from Mr Marshall. In their evidence to IBAC, the CFA CEO said they heard 'one way screaming and yelling' from Mr Marshall when he had reportedly gone into a separate room to discuss draft recommendations, including the potential inclusion of the dispute resolution clause with the Fair Work Commissioner. According to the CFA CEO, Mr Marshall considered the proposal to be a departure from what was previously agreed. The same day, Mr Bates sent a text to Minister Jennings to report that 'Peter is very agitated about the ability to send all things to arbitration to break deadlocks'. He added:

> Peter is very very keen for you to call him again. I've tried to raise the 'veto' concept of the 'new agree clauses' but he keeps saying he just wants the deal you, he and I agreed.

Request to transfer proceedings

IBAC established that towards the end of the FWC proceedings, the CFA attempted to have the matter arbitrated by the Fair Work President or a Full Bench of the Commission as they were not satisfied with the proceedings to date. In line with Minister Garrett's recommendation, on 24 May 2016 the CFA CEO wrote to the Fair Work Commissioner indicating CFA's intention to ask that the matter be transferred to the President for either arbitration or the making of binding recommendations.

In her evidence to IBAC, Ms Garrett said that after the government became aware that the application to the FWC had been made, she was called to an ERSC meeting with the Premier, the Treasurer and Minister Jennings. Ms Garrett said that it was unlike any of the many Cabinet subcommittee meetings she had attended before:

> ... they're meant to be incredibly formal structured meetings with agendas, circulation of papers, responses, really a form of a mini-Cabinet. I would not describe this meeting as such but it was called an ERSC meeting.

Ms Garrett continued:

> ... normally subcommittee meetings are set in stone ... this was a ... "We're going to call it an ERSC meeting" but really it's not really an ERSC meeting.

After the ERSC meeting the CFA withdrew its request. The parties resumed the conciliation under the same Fair Work Commissioner.

In his examination by IBAC, Mr Jennings said that he considered the CFA's request to be a stalling device and that they were operating inconsistently with the whole of government ERSC decision.

Finalisation of proceedings

IBAC found that as the FWC proceedings neared a close, the government continued to give considerable attention to managing Mr Marshall's growing impatience at the delay in progressing the EBA and the potential political fallout.

On 31 May 2016 and the morning of 1 June, texts exchanged between Minister Jennings, Mr Bates and a PPO advisor show that Mr Bates was anxious about possible delays and managing Mr Marshall. In a text to Mr Jennings, Mr Bates said, 'Peter is getting very jumpy. Is there any message I can share with him?' Further demonstrating the government's concern about Mr Marshall's reaction to the delays, Mr Jennings texted a member of the PPO:

> It is not at all simple to delay to next week as Peter has been like a violin string about to break continually for the past fortnight and he gets very very distressed about having to delay everyday.

On the evening of 31 May, Minister Jennings learnt that a major media outlet was about to publish an article stating that the CFA Board was unlikely to accept the FWC's recommendation. He again sent text messages to PPO members to note that he had been advised by a fellow minister that 'if we have to fall out with one side we should trash the board,' and to warn that the Premier needed to be prepared for the prospect that the government would be 'at war' with 'one side or the other or perhaps both' the next day.

When asked in evidence about whether he had felt a sense of urgency at the time regarding Mr Marshall's attitude and the duration of the dispute, Mr Andrews stated that though he could not recall Mr Marshall's personal attitude, he did remember that the situation was 'delicately poised'.

On 1 June 2016, the morning of the Final Recommendation's release, an advisor in the PPO (PPO advisor B) sent a text to Minister Jennings to note that 'any movement you can get on the consultation issue would be very helpful in the public presentation' and that 'on the veto issue, [the Premier] is firmly of the view that we need to be able to say that the union has given some ground'. In his evidence, Mr Andrews stated that though he could not recall his view at that point in time, it was always his preference that in such processes 'there's give and take on both sides'.

FWC's Final Recommendation

In the FWC's five-page Final Recommendation, the Fair Work Commissioner made a series of observations and recommended minor amendments to the draft EBA. The Fair Work Commissioner acknowledged that the CFA had raised concerns, but noted that it was difficult 'to reconcile this against previous agreements reached and the fact that at all times before me I have had the benefit of senior members of both the CFA and different areas of government advocating for certain outcomes'.

An observation in the Recommendation – that the UFU's claim had 'not changed in any significant particular' since November 2015, when the matter was first put before the Fair Work Commissioner – is consistent with IBAC's finding that in reaching the undisclosed deal with the UFU, concessions were made by the government.[50]

Following the finalisation of the FWC proceedings, Minister Garrett and the CFA remained concerned with the draft EBA because their key concerns remained largely unaddressed.[51] This included the 'seven on the fireground' issue, potentially discriminatory clauses, and consult and agree clauses.

50 Further information about the FWC's Final Recommendation is set out at Appendix B.
51 This statement is based on a letter from the CFA Board Chair sent to Minister Merlino on 10 June 2016 that listed the CFA's outstanding concerns with the draft EBA, and Minister Garrett's evidence to IBAC that her key concerns with the CFA EBA were not substantively addressed. IBAC has undertaken a comparison of the key issues identified by the CFA and Minister Garrett with the draft EBA. IBAC did not identify any substantive modifications made to the draft EBA following the FWC proceedings in relation to the key issues identified by the CFA and Minister Garrett.

By contrast, Mr Marshall was pleased with the outcome. At 5.30 pm on the day the Recommendation was released, Mr Marshall sent text messages to Minister Jennings and his Parliamentary Secretary saying, 'Love you guys ... More important my members will ... Love Daniel'. A text message from Mr Bates to Mr Jennings later that evening noted that 'Peter has phoned be [sic] several times to say how happy he is. At least one side in all of this is feeling good'.

IBAC found that following the release of the FWC Final Recommendation, the government sought to legitimise the draft EBA by referring to the authority and public image of the FWC. In a radio interview on 2 June 2016, Minister Merlino referred to the FWC's recommendations as 'fair and balanced'. The following day, a news article similarly reported that the Premier had said that all Victorians needed to respect the 'balanced and fair' recommendations of the FWC.

Confidential and inappropriate communications during the conciliation

FWC conciliations and good faith bargaining

IBAC received evidence that, where there is a dispute in relation to a major enterprise agreement,[52] the FWC conciliation process can involve multiple representatives from relevant government agencies, departments or statutory authorities, as well as representatives from IRV. The FW Act in place at the time also stated that the FWC 'may ... inform itself in relation to any matter before it in such manner as it considers appropriate'.[53] This broad remit allows the Victorian Government to apply to be heard by the FWC and make submissions in relation to an EBA dispute. IBAC heard evidence from the presiding Fair Work Commissioner that, in their opinion, the 'parties' to conciliation conferences, in addition to the relevant agencies, include the arms of government that have a direct interest, and that their participation was to be understood by all parties.

The PSIRP require that departments, agencies and bargaining representatives adhere to the good faith bargaining requirements set out in the FW Act. Specifically, those involved are required to:

- disclose relevant information in a timely manner
- give genuine consideration to the proposals of other bargaining representatives and reasons for their responses
- recognise and bargain with the other bargaining representatives for the agreement.[54]

This encompasses long-standing principles about the need for transparency and disclosure of any communication between parties or other interested persons and a judicial officer. Good faith bargaining is a key principle in the PSIRP which requires that negotiations be based on integrity, honesty, courtesy and information sharing.[55]

Minister Jennings' communications during the conciliation

While Minister Jennings did not attend the conciliation hearings, IBAC identified that he was kept up to date by Mr Bates and through communication with the presiding Fair Work Commissioner. Telephone extracts show that Minister Jennings and the Fair Work Commissioner exchanged at least 22 text messages between 17 May and 1 June 2016. Four of these messages included requests that the other person call them. The Fair Work Commissioner confirmed in their evidence to IBAC that Minister Jenning's numerous calls to them were about the EBA dispute. When pressed further on why Minister Jennings would be calling them on numerous occasions in relation to the proceedings, the Fair Work Commissioner said:

> ... presumably he [Minister Jennings] was trying to assist in the resolution of the dispute. I presume that's what he's trying to do. But I really don't know.

Minister Jennings also provided updates to the Premier, other ministers, Mr Bates and Mr Marshall on the content of his conversations with the Fair Work Commissioner and progress on the EBA in general.

52 The PSIRP defines a major enterprise agreement as those with a large public sector workforce such as the public service, nurses, doctors, health professionals, teachers, police and certain emergency services, and with a salary base of over $1 billion, Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Vic Gov, Melbourne, p 10.
53 *Fair Work Act 2009* (Cth) (Version C26 compilation date 1 May 2016) s 590(1).
54 *Fair Work Act 2009* (Cth) (Version C26 compilation date 1 May 2016) s 228 (1) (b), (d) and (f); Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Department of Economic Development, Jobs Transport and Resources, Vic Gov, Melbourne, p 20.
55 Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Department of Economic Development, Jobs Transport and Resources, Vic Gov, Melbourne, pp 3, 6.

Unlike other communications between conciliation parties and the Fair Work Commissioner, which were disclosed to all parties by virtue of the open nature of conciliation conferences, Minister Jennings did not disclose his communications to the CFA or Minister Garrett. Minister Jennings confirmed this in his examination before IBAC. His failure to disclose these communications, as well as his and Mr Bates' failure to disclose the April undisclosed negotiations and subsequent deal reached with the UFU (see section 3.2.4), was contrary to the expectations for good faith bargaining set out in the PSIRP. It was also contrary to his obligation to act with honesty under the Ministerial Code.[56]

When asked in evidence about the nature of his communications with the Fair Work Commissioner, Mr Jennings said that the Fair Work Commissioner 'probably used me as a sounding board on a couple of occasions when the going got tough'. Mr Jennings stated that his actions were aimed at protecting the public interest and supporting the Fair Work Commissioner to keep the parties in conciliation and resolve the dispute. The Fair Work Commissioner gave evidence that the purpose of receiving communications from Mr Jennings was to facilitate resolution and to understand what was acceptable by the government.

Mr Jennings gave evidence that he never intended to advise the CFA of his communications. He considered that there was 'nothing unusual about conversations that take place through back channels to provide a steer in relation to industrial disputes'. Mr Jennings told IBAC that he was not aware of FWC expectations in relation to communications between parties outside of scheduled conciliation conferences but recognised that he should not say anything to the Fair Work Commissioner that might 'contaminate' the process.

Mr Jennings acknowledged that part of the reason he communicated directly with the Fair Work Commissioner was because the government's endorsement of the 'UFU proposal' via ERSC rested upon the agreement he had reached with Mr Marshall, which the CFA was not aware of.

Mr Bates' communications with Mr Marshall

IBAC found that Mr Bates' stakeholder management of Mr Marshall extended beyond making himself available at the formal conciliation conferences. Both during the FWC conciliation, and afterwards until September 2016, Mr Bates maintained a text message dialogue with Mr Marshall. The frequency of text messages exchanged varied: sometimes messages were sent daily and at other times weekly. According to text messages lawfully obtained and reviewed by IBAC, between 11 May and 6 September 2016, Mr Marshall and Mr Bates texted each other 381 times. The content of several of Mr Bates' messages was inappropriate for a senior public officer. For example, in three separate messages sent to Mr Marshall, Mr Bates referred to the CFA as 'clowns', and in a fourth he referred to them as 'childish'.

IBAC also found that Mr Bates shared sensitive information with Mr Marshall on two occasions. The first occasion was midway through the FWC process on 23 May 2016 when Mr Bates sent a text to Mr Marshall – before an official announcement had been made – that the Premier was reshuffling some of his Cabinet. The message noted that there would be 'no change in the Emergency Services portfolio'. On the second occasion, on 8 August 2016, Mr Bates passed on confidential live updates he was receiving from a CFA Board meeting. In this exchange, Mr Bates advised Mr Marshall that the Board were editing a motion to support the EBA and that volunteers were pushing for a deferral on the EBA vote.

At one point during the FWC process, Mr Marshall sent a text to Mr Bates asking:

> Should I be sending you emails in light of FOI [Freedom of Information][?]

In response, Mr Bates sent a text stating:

> I'm happy to have factual stuff emailed. Anything you'd prefer kept confidential or of a legal advice nature I'm happy to have as hard copies.

56 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.2(ii).

3.3.3 Board endorsement of the CFA EBA

Following the FWC conciliation, the government continued to face opposition to the draft EBA. CFA volunteers led protests against it, while segments of the media published regular headlines that criticised the government's approach. Following the conciliation, Minister Garrett and the CFA remained concerned by the terms of the EBA.[57]

At this time Australia was also in the middle of a federal election campaign, and the CFA EBA had become an election issue. The Federal Coalition Government made a commitment that if they were returned to office, they would overhaul the FW Act to protect volunteer firefighters.

IBAC found that as media attention on the volunteer issue grew, Mr Marshall became increasingly concerned that the government might renege on the undisclosed deal. Following the FWC outcome, Mr Marshall sought to use this to legitimise the EBA. In a news article from 2 June 2016, Mr Marshall is reported to have stated publicly, 'Are we really saying we're not going to accept the independent umpire's determination?'

On 6 June 2016, a news article reported that '[m]any on Spring Street expected Ms Garrett to resign if the Premier forced a deal through, but following talks on Monday and over the weekend it is understood an undertaking was given that the deal would not be rammed through Cabinet'. The same day, Minister Jennings sent a text to the Premier advising that:

> Peter believes that we did a deal with [the Federal Labor Opposition Leader] over the weekend to fuck him over … [...] He is off the reservation and when I outlined what we were trying to do to lock in the CFA board – he has interpreted that as a betrayal of "his agreement" I've had all the barrels over the phone tonight and he is saying that tomorrow on the steps he will say he had a deal with you until you did a deal with [the Federal Opposition Leader].

Further messages sent that evening indicate that the matter was resolved after Mr Marshall was reassured that no such deal with the Federal Opposition Leader had been made. IBAC did not find any evidence that a deal was made between the Victorian Government and the Federal Labor Opposition Leader.

Government efforts to generate support for the EBA

Based on the evidence set out below, IBAC found that following the FWC conciliation, members of the government sought to address the concerns of Minister Garrett, the CFA and its volunteer workforce by leveraging the authority of the Emergency Management Commissioner.

On 2 June 2016, the Premier's Chief of Staff sent a text to Minister Jennings saying that the Premier thought it could be a good idea to get the Emergency Management Commissioner to publicly endorse the EBA. Minister Jennings subsequently sent text messages to a group chat with other Cabinet ministers and to Mr Andrews noting that he and the Premier's Chief of Staff had been 'workshopping' how to organise the Secretary of the Department of Justice and the Emergency Management Commissioner to provide Minister Garrett with 'backup' in directing the board.

On 3 June 2016, the Premier's Chief of Staff sent a text to Minister Jennings stating, 'for what it's worth Daniel says "we are not asking [the Emergency Management Commissioner] to do it we are ordering [them]"'. After receiving this message, Minister Jennings sent a text to the Premier, advising him that the Emergency Management Commissioner would 'do what we want [them] to do today and in the days ahead …' Minister Jennings later advised his ministerial colleagues that 'the UFU understand and accept the [Emergency Management Commissioner] review mechanism'.

On 4 June 2016, it was publicly announced that the Emergency Management Commissioner would oversee the implementation of the EBA.

57 In particular, see section 3.3.3, 'Minister Garrett resigns' and 'Dismissal of the CFA board'.

The Emergency Management Commissioner gave evidence to IBAC that they recalled receiving a phone call from the Premier in which they recalled the Premier saying, 'Can you get in? Someone's got to fix this. What – what's got to be done?' The Commissioner recalled being told to 'make sure you manage Peter and get the volunteers'. The Commissioner told IBAC that:

> ... they knew that if I said, 'This is a good thing to do', 90 per cent of volunteers would say, 'Oh, that's probably a good thing to do 'cause [the Commissioner] said it was O.K. to do', or they may question me, that's fine ...

While the Emergency Management Commissioner took on the role, their public comments on the matter were equivocal, noting that there would be 'challenges' implementing the EBA.

The government also sought to introduce a dispute resolution mechanism into the EBA, which would enable the Emergency Management Commissioner to refer the matter to the FWC. The government believed that this mechanism would prevent the UFU from what Mr Bates described in a text to Mr Jennings as the UFU 'unreasonably withholding agreement'. Minister Jennings contacted the FWC President about the idea on 6 June and subsequently held a meeting with the CFA Board. Mr Eccles recollected that although the CFA was pleased to engage with the President, the CFA did not commit to the President's proposals, which were intended to address the impasse with respect to the EBA.

In his evidence to IBAC, Minister Jennings confirmed that the proposal to have the Emergency Management Commissioner monitor and report on the implementation of the EBA ultimately was not adopted.

Minister Garrett resigns

At this point in time, text messages between the Premier and his colleagues, including Minister Jennings, show that they were still trying to bring Minister Garrett onside. They hoped that despite her misgivings, she would take the Emergency Management Commissioner oversight mechanism as a 'way out'.

A text message exchange between Minister Jennings and the Premier's Chief of Staff establishes that the Treasurer, who was a long-time friend of Minister Garrett, was asked to put the review mechanism to her. In his evidence to IBAC, the Treasurer said that Minister Garrett's reaction was 'less than positive' and that she did not see the review mechanism as a way through the problem. The Treasurer said that:

> Her concerns were more substantive than that and she wanted substantial alterations made to the agreement. In fact, she just didn't like the agreement at all.

On 1 June 2016, PPO advisor B sent a text to Mr Jennings which said, 'He [Mr Andrews] also wants Pallas to sit Garrett down and give her a very blunt assessment about the career paths currently in front of her'. In his examination by IBAC, the Treasurer asked if Mr Andrews expected him to make it clear to Ms Garrett that she was expected to fall in line and endorse the EBA. The Treasurer disagreed that this was what was put to him and said that he instead saw himself 'as a willing participant to try and counsel Minister Garrett about ... the options in terms of the course of action ahead of her'. The Treasurer explained that he understood that the practical consequences of Minister Garrett refusing to endorse a settlement that the Premier considered acceptable were that she would either have to resign or be sacked. In her examination by IBAC, Ms Garrett described the meeting as a long conversation over drinks which lasted for 'at least three hours', in which the Treasurer tried to convince her to change her position and counselled her regarding the career repercussions of not doing so.

IBAC found that during this period, an emphasis was placed on not alienating the UFU, and there was a perception that Minister Garrett's position was an obstacle to this. The following message was sent from a minister to Minister Jennings on 6 June 2016:

> I just cant [sic] see a set of circumstances where she can deliver the cfa [sic] and we can hold the UFU. And holding the UFU must be our priority and then bleed and fight back on the other front ...

In his evidence to IBAC, Minister Jennings said that the government went to some lengths to keep Minister Garrett within the government, and that 'right up until the morning on which she resigned, actions were being taken to try to keep her in the tent'.

On 10 June 2016, the day Cabinet was due to meet to endorse the draft EBA, Minister Garrett resigned as Minister for Emergency Services. She told IBAC in evidence that she felt she had done everything she could to convey her concerns with the EBA to government and that there was nothing more she could do.

Dismissal of the CFA Board

Based on the evidence set out below, following Minister Garrett's resignation on 10 June 2016, the government continued to push for the CFA Board to approve the draft EBA. When the CFA refused citing legal barriers, the Board was dismissed. The evidence, as set out below, shows that the government had prepared themselves for this possibility.

Prior to these events, on the morning of 6 June, DPC Secretary Mr Eccles had advised Minister Jennings via text that:

> [The] Chair and Board are GIC [Governor-in-Council] appointments. We will need to provide them for the purpose of procedural fairness with notice (say 48 hours) of the intention to dismiss. This would come from the Minister – either current or newly commissioned.

Minister Jennings sought further information about the composition of the Board and process for appointing new members from Mr Bates the following day, which he then relayed to the Premier and PPO staff. On 10 June 2016, a news article titled 'Vic minister resigns, CFA board sacked after failing to support pay deal', reported the Premier as having said that if the CFA Board was unwilling to back the EBA, 'we'll have a new board in good time'.

On 10 June 2016, shortly prior to Minister Garrett's resignation, Cabinet met and endorsed the EBA. The Premier then appointed Mr James Merlino as the new Minister for Emergency Services. On the same day, Minister Merlino sent a letter to the CFA Board which stated that the Board had until 5 pm that day to endorse the proposed EBA. He stated that the Board should set aside any legal concerns as these could be addressed in the FWC certification process. He further noted that he was willing to use his ministerial powers of direction or recommend that the members be removed from their positions should he not be satisfied with their response.

The CFA Board responded in a letter that afternoon. The Board said it was unable to comply with the FWC's Final Recommendation which incorporated the President's proposals, citing legal concerns. The Board expressed its view that it, not just the FWC, must be comfortable that the EBA was lawful and capable of being approved, and noted its legal obligations to disclose in a statutory declaration any contrary view held or it risked committing a criminal offence. The Board also noted that endorsing the EBA would put them in contempt of a Supreme Court of Victoria injunction granted that afternoon, which banned the CFA from putting the proposed EBA to a vote in order to allow the court time to consider whether the EBA was lawful.

IBAC heard evidence that the government had obtained legal advice which did not accord with the advice received by the CFA. The government's legal advice was not provided to the CFA. Mr Bates said in evidence that he was concerned that the advice would be leaked to the media.

Minister Merlino responded to the Board's letter later that day in a further letter addressed to the CFA Board. IBAC notes that he did not engage with the substance of the Board's concerns. Rather, he stated that the CFA Board 'as presently constituted' had 'completely set itself against' the proposed EBA and advised that the government had consequently started the process to remove the CFA Board. The Minister added that he nevertheless expected the CFA to comply with the court order made that day. That evening, in a media release, Minister Merlino announced the dismissal, stating that he did not have confidence in the Board's ability to 'end a dispute that had gone on for too long'.

A week later, on 17 June 2016, the CFA CEO announced their resignation.

Appointment of a new CFA Board

On 17 June 2016, a new CFA Chair, Deputy Chair and three other board appointments were announced.[58] The appointment process for these five roles took place in an environment of significant media scrutiny and pressure. As noted above, members of the government had made public statements about the unwillingness of the previous board to endorse the EBA, and the need to resolve the long-running dispute. The Minister and wider government's expectation of the new board members was clear – they were to approve the EBA. In light of the Minister's power to direct the CFA Board under the *Country Fire Authority Act 1958* (Vic), these expectations held considerable weight.[59]

At the time, board appointments were governed by the *Appointment and Remuneration Guidelines*.[60] The guidelines required that a number of factors be considered before filling board vacancies, including that due process and the principles of merit selection be observed in the appointment process.[61] Based on the evidence set out below, IBAC found that, contrary to these requirements, the process to select the new, government-appointed CFA Board members was opaque, non-competitive and politicised. The process was designed to select members amenable to resolving the dispute and following direction to approve the EBA in a form acceptable to government.

IBAC's concerns regarding these events relate specifically to the process of appointment for these CFA Board members and IBAC makes no findings about the suitability of the board appointments.

Mr Bates gave evidence that in replacing the entire CFA Board after the original Board was dismissed, 'the sourcing of names for the Board was primarily run from the Premier's Private Office', which was not the usual process. Mr Bates explained that the usual process for board appointments was that 'the department would prepare a list of candidates for the Minister to consider'. He added that ordinarily the Minister's office 'will consult with the Premier's office and they may add further candidates'.

As board appointments were announced on 17 June 2016, Mr Bates exchanged a series of texts with an acquaintance about the matter. Regarding one of the new appointees, the acquaintance said that they hoped the appointee 'fully comprehends that [they] will have to do as [they're] told'. Mr Bates responded, 'Only for the first couple of weeks'. In his evidence to IBAC, Mr Bates explained that in the exchange he was referring to the expectation of the Board following a direction from the Minister under the CFA Act.

58 The remaining four board positions, which were requisite nominations from the volunteer workforce, were filled a few weeks later. The volunteer CFA appointees were not considered in this report.
59 Section 6A of the *Country Fire Authority Act 1958* (Vic) provides that the CFA is subject to the general direction and control of the Minister in the performance of its functions and exercise of its powers, and that the Minister may give written directions to the CFA. For a further discussion of board governance and ministerial directions, see section 4.4.2.
60 Victorian Government 2014, *Appointment and renumeration guidelines for Victorian Government Boards*, Vic Gov, pp 4–5.
61 ibid., pp 4–7.

In a radio interview on 19 June 2016, Minister Merlino denied that he wanted 'a board of yes people'. He said:

> That's not how I operate. I need a board that is willing and prepared to end this dispute.

Mr Andrews gave evidence to IBAC that those appointed would have had 'a pretty keen awareness of what had gone on and what their first order of business would be', namely to 'deal with the EBA ... that the government and Cabinet had made a decision to endorse'. Mr Andrews stated that 'it would be almost improper to have appointed people without letting them know what our expectations were, what the context was'. He noted that the recommendations for appointments would have been those 'willing, able and qualified who wanted to get this finished. And move past it'.

On 17 June 2016, Mr Bates attended the new CFA Board's first meeting. In a subsequent text message sent to Minister Jennings on 19 June, Mr Bates recalled that the FWC President's proposal – the option of a referral to the FWC in the event of a stalemate between the negotiating parties – was discussed at the meeting. He noted that the new Chair was strongly in favour of including such a clause in the EBA, but that Mr Marshall had objected to its inclusion. Mr Bates added:

> So, Peter wants it out altogether and the new Chair wants it in the EBA. I think this is the final sticking point that will require your magic. Given the govt has removed the Board and the old Minister and CEO have stood down one would hope for this concession from the UFU.

Mr Marshall did not concede. While a FWC oversight mechanism was included in an early unsigned draft joint statement of intent between the CFA and UFU, the mechanism was not adopted in the EBA. In his evidence, Mr Bates stated that all attempts to introduce dispute resolution mechanisms into the EBA were unsuccessful:

> We tried many times to put in a – a you know, a dispute resolution or a deadlock breaker. And I don't think we ever got to an agreement with Peter or the UFU on that.

On 22 June 2016, the Supreme Court injunction, which halted a workforce vote on the EBA, was lifted. With the agreement of both parties, the Supreme Court made new orders requiring the CFA and the volunteer firefighters to meet and discuss their concerns with the agreement. The CFA subsequently released a statement that the proposed agreement would be put to the workforce 'no earlier than 20 July'. Mr Marshall interpreted this as a delaying tactic and voiced his concern about the delay and related matters in a text message to Minister Jennings on 23 June, asking 'what confidence can we have that the board are simply not going to be the same?' Mr Jennings reassured him via a text message, which read:

> I sat down with [the Board Chair] for an hour yesterday after the Supreme Court matter and let [them] know what concerns I had about what they did and said it would be bad in your eyes. [They are] committed to getting the agreement through. [They expect] to speak to you today and provide a constructive way forward.
>
> I have told James [Merlino] and [the Board Chair] that they have to change the IR team and approach in dealing with you. They both agree. I'm sorry for the pressure you at [sic] under but we are taking on a huge amount of water, by trying to get to where we need to.

Mr Marshall replied, thanking Minister Jennings. He added, 'I also appreciate the fact you are taking a hammering in defending our agreement / and I want [sic] forget that and I do anything to try negate the damage. You can let Daniel know that we will be there for the long haul including being there for him and your team at the next state election'.

CFA Board minutes obtained by IBAC show that on 12 August 2016, the CFA Board authorised the CFA CEO to put the proposed EBA to a vote of CFA firefighter staff.

Despite this authorisation, the EBA did not progress. On 22 August 2016, the Federal Coalition Government introduced amendments to the FW Act intended to protect the interests of volunteer firefighters.[62] The CFA EBA approved by the board was incompatible with these introduced requirements, and it did not proceed.

In response to a draft of this report, Mr Marshall claimed that the UFU and CFA implemented the conditions negotiated in the EBA through other means (via policies).

As detailed further in section 3.5, on 24 May 2017, the government introduced the FSLAR Bill 2017 to Parliament to restructure the fire services, but the Bill was defeated on 30 March 2018. The Bill was then reintroduced to Parliament on 29 March 2019 and passed on 20 June 2019, resulting in the formal establishment of FRV on 1 July 2020. All MFB employees and all career CFA firefighters became employees of FRV. The CFA remains a public body but now comprises only volunteer firefighters.

3.4 Negotiations and finalisation of the MFB EBA (June 2016–February 2019)

3.4.1 Overview

At the time of IBAC's investigation, the MFB was a fire service operating in metropolitan Melbourne. According to MFB's annual reporting, in the 2016/17 financial year, it employed 1954 career firefighters. In 2019, under a restructure of Victoria's fire services, legislation was passed to merge career firefighters from the MFB and CFA into a new organisation, FRV.[63] This section details the events leading up to the finalisation of the MFB EBA in early 2019, prior to the establishment of FRV.

Following the amendments to the FW Act in 2016, which effectively ended the CFA EBA dispute, the government and the UFU shifted focus towards the MFB EBA. With the terms of the CFA EBA nominally finalised, IBAC heard evidence from MFB CEO A that the UFU now expected these terms to be applied to the MFB.

IBAC found that consistent with the CFA experience through the first half of 2016, the MFB and senior figures within government involved in the negotiations initially held differing positions on the draft MFB EBA. At first, the MFB was opposed to many of the proposed clauses and were concerned about DPC's involvement in the EBA negotiations (see section 3.4.2).

In their efforts to settle the EBA, from March 2017 to January 2018 the government filled four vacant MFB Board positions with new members who were made aware of the government's preference for the EBA, and reassured Board members through side agreements and letters of comfort which were not ultimately honoured (see section 3.4.3).

The MFB Board approved the EBA in January 2018 and the FWC approved it in February 2019 (see section 3.4.4). The terms of the EBA were transferred to FRV under the FW Act and an application was made to the FWC to vary the EBA to preserve terms and conditions of employment of those employees transferring to, or being employed by, FRV.

62 Explanatory Memorandum, Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (Cth) 3.
63 *Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019* (Vic), as enacted.

Events over this period further demonstrate the leverage that Mr Marshall had over the government. Again, the UFU refused to modify key clauses in the EBA that were of concern to the MFB, and the government ultimately supported the UFU's position on such clauses (see section 3.4.5).

IBAC also found that, like the CFA, the MFB was unaware of Minister Jennings and Mr Bates' undisclosed negotiations with Mr Marshall and the undisclosed deal reached with him about acceptable terms to be included in the EBA. This significantly undermined their negotiating position.

IBAC considers that, while the conduct identified in section 3.4 may be capable of enabling, facilitating or resulting in corrupt conduct, IBAC could not establish that the identified conduct met all required elements to make findings of corrupt conduct under the IBAC Act.

3.4.2 Negotiating positions for the MFB EBA

Shortly after Labor won the election in 2014, negotiations for the fire services EBAs progressed, and were initially focused on the CFA EBA. Minister Jennings gave evidence that the negotiating parties understood that whatever agreement was concluded for the CFA, the terms would be largely mirrored in the MFB EBA. The MFB were therefore invested in the outcome of the CFA negotiations.

IBAC found that as with the CFA negotiations, the government and the MFB's bargaining positions did not align. As set out below, the government was willing to generally support the UFU's position. By contrast, the MFB held many of the same reservations about the contentious clauses as the CFA.

The position of government

IBAC heard evidence from Mr Bates that the starting point for the negotiations for the MFB EBA was a modified version of the draft MFB EBA which Mr Marshall had sent to Mr Bates in April 2016. Mr Bates noted in the year after he received the draft MFB EBA from Mr Marshall, the document was updated to include 90 to 100 clauses that had been negotiated separately between the MFB and UFU, and that this then became the basis of negotiations. Mr Bates said that as with the CFA EBA, he had conveyed to Mr Marshall that the government was willing to support the UFU's position on the MFB EBA, noting that some clauses might not survive the FWC certification process.

Mr Bates said in his evidence to IBAC that his state of mind at the time was that, while the government was willing to try to reopen negotiations and vary some of the clauses, the fall-back position if Mr Marshall refused was the CFA agreement landed at the end of the April negotiations (the 'UFU proposal').

Mr Bates told IBAC that he and others involved in the negotiations were following directions that he had received from the relevant Cabinet subcommittee, as well as executing the instructions or wishes of Minister Merlino. During questioning, Mr Bates agreed that he was not following step by step instructions from the subcommittee, but rather that he had a general understanding of what the subcommittee wanted to achieve and was in regular contact with Minister Jennings and Minister Merlino, both members of the subcommittee. In his examination by IBAC, it was put to Mr Bates that while there might have been an occasion where the subcommittee's objective may not have aligned with the UFU's, their objective was largely to give effect to the UFU's proposal. Mr Bates agreed that this was a fair summary. It was also put to Mr Bates that he did not communicate to the MFB Board that an agreement had been reached with the UFU that the government was intending to implement. Mr Bates said that he had communicated to the Board that the view of the government was that no further progress was to be made by continuing negotiations and that it was keen for the MFB Board to reach a decision in the coming days.

Mr Bates was asked whether he had conveyed to the MFB Board that he or the government had given an indication to Mr Marshall that it would seek to implement the 'UFU proposal'. Mr Bates said that he did not think that he did.

The position of the MFB

IBAC found that MFB CEO A had significant concerns when they first became aware of the new direction for the EBA in April 2016. In evidence to IBAC, they also expressed frustration at Mr Bates' sudden involvement in fire services bargaining. They became concerned that Mr Bates had been negotiating with the UFU outside of the formal bargaining process and that Mr Bates might not have fully understood the ramifications of his actions. MFB CEO A recalled meeting with Mr Bates to relay their concerns, and asking him, '... do you understand the implications of agreeing to these things?'

MFB CEO A expressed further concern when Mr Bates shared with them the UFU's latest log of claims for the CFA EBA (the 'UFU proposal'), which, as previously stated, was intended to form the basis of the MFB EBA. When examined by IBAC, and as reflected in the evidence below, MFB CEO A said that the new iteration contained 'more demands and more cost and more outrageous claims' than the previous versions. This characterisation of the 'UFU proposal' was disputed by Mr Marshall, who in his response to a draft of this report, argued that the log did not include new demands, but rather simply reflected the UFU's consistent log of claims throughout bargaining. However, as set out below, the evidence before IBAC is that the 'UFU proposal' did not reflect earlier logs of claims, and prompted surprise and concern from MFB CEO A when it was first presented to them.

During his examination by IBAC, Mr Bates gave evidence that on 17 April 2016 he received a call from MFB CEO A. Mr Bates recalled MFB CEO A asking him, 'What the fuck do you think you're playing at?' in relation to the CEO's concern that DPC had been negotiating with the UFU without the knowledge of the fire services. Mr Bates said that he assumed the reason for the call was because the CFA CEO had shared the 'UFU proposal' with their MFB counterpart. MFB CEO A went to see Mr Eccles, the DPC Secretary, about what they thought was rogue behaviour by Mr Bates. MFB CEO A told IBAC in evidence that 'the path that it was heading down was disastrous for the organisation'. Mr Eccles confirmed to them that Mr Bates was operating in accordance with government policy.

IBAC also heard evidence from MFB CEO A that there were a number of conditions that the MFB and Board were resolutely opposed to, the most significant being the consult and agree 'veto' clauses:

> I think anyone with any understanding of accountability and any understanding of the implications of consult and agree and the consequence of veto is clear that you – you wouldn't have that in any Enterprise Agreement anywhere, let alone in an emergency service context.

MFB CEO A's other concerns were cost, the lack of a requirement that firefighters be physically fit for duty despite the job requiring a certain level of fitness, and the inability for the MFB to enforce the code of conduct that applied to the rest of the VPS. In their evidence, MFB CEO A also noted their concerns around the lack of meaningful diversity obligations, noting that 'only three per cent' of the MFB workforce were women and 'there was a clear requirement to increase the opportunities available for women to join the organisation and to take up a career as a firefighter'.

3.4.3 Government strategies to finalise the agreement

According to the former MFB President (2015 to January 2018), until mid-2017 the MFB Board was unanimous in opposing the EBA, but this changed with the appointment of several new board members. From March 2017 to January 2018, four new members were appointed to the MFB Board to fill various vacancies.

IBAC established that the process to select the new MFB Board members lacked transparency and was influenced by political considerations. IBAC's concerns relate to aspects of the process of appointment for these MFB Board members, including selection panels, interviews and reference checks. IBAC makes no findings about the suitability of the board appointments.

The board appointment processes were also contrary to the relevant *Appointment and Remuneration Guidelines* in place at the time which required a selection panel to shortlist nominees, consult with referees and make recommendations for the Minister's consideration (see *Appointment of Board member A to the MFB Board* and *Appointment of Board member B to the MFB Board* below).[64]

Appointments to the MFB Board

The MFB Board appointments were statutory appointments made by the Governor in Council, which required the approval of the relevant minister and Cabinet, via a departmental briefing process.

In their examination by IBAC, PPO advisor A, who was familiar with the MFB Board appointments but not directly involved in the appointment process, was questioned about the government's expectations of the board appointees. When it was put to PPO advisor A that board appointees were 'selected on the basis that the government expected them to support the government's position', PPO advisor A responded that that was a fair assessment.

During their examination, the advisor stated:

> We were ensuring that people going on the board understood that that was where the government would be asking – what they'd be asking them to do. So whether you call it stacking the board or whatever you wish to call it, people ... had to go through the process of meeting the selection criteria ... they're nominated, it then goes through a departmental brief and then it's rubber stamped by Cabinet – it's stamped by Cabinet. So they have to go through the whole process.

PPO advisor A also noted that prospective candidates had to meet a skills matrix before their nomination could be considered by Cabinet.

When it was put to PPO advisor A that there was nothing unusual, in the political game, about a government agency having its board stacked so that members of the board would support a government position, PPO advisor A agreed that this was not unusual. PPO advisor A drew comparisons with water boards being 'stacked by farmers and irrigators' to deliver the water policy of the previous Napthine–Baillieu Liberal National governments in Victoria.

When PPO advisor A was reminded of boards' obligations to make decisions in the best interests of the organisation, they said that the government had listened to the MFB position throughout the bargaining process and sought assistance from the FWC 'to see if we could push those issues as far as we could with the UFU to ensure the board was comfortable or felt that it had been pushed as far as practicably possible'.

In addition to the general evidence about the appointment process adopted for the MFB Board set out above, IBAC's investigation obtained further information about the appointment of Board member A and Board member B to the MFB Board. This report goes into more detail about these appointments below.

64 Victorian Government 2014, *Appointment and renumeration guidelines for Victorian Government Boards*, Vic Gov, 6.5, 7, 7.3.

Appointment of Board member A to the MFB Board

Board member A was appointed to the MFB Board in June 2017. Their name was put forward during the selection process for the role by PPO advisor A, who had worked with them previously.

In their evidence, Board member A stated that they did not undertake a formal panel interview process and could 'not recall with absolutely certainty' but did not think they were asked to provide referees. This was contrary to the relevant board *Appointment and Remuneration Guidelines*, which stated that the selection panel should ensure that applicants are interviewed and that consultation occurs with the applicant's nominated referees.[65]

When asked in evidence about whether the process was in accordance with the guidelines, Board member A responded that:

> I don't know ... the Appointment Guidelines well enough to answer that ... But my experience has been that the process was not uncommon ... I mean at the time of course.

Board member A gave evidence that at the time, they believed they were selected because their industrial background closed a skill gap on the MFB Board. A few months after joining the MFB Board, the MFB President at the time asked Board member A to fill the vacant position of Deputy President.

Board member A said in evidence that they believed their appointment was initially a source of relief among board members given their strong industrial relations background and potential to operate as a bridge to government. IBAC heard evidence from the MFB CEO A, however, that they perceived Board member A's appointment to have been unduly political based on their connections to government. MFB CEO A stated in evidence, 'My view is that (Board member A) came into the organisation as a ... Member of the Labor Party and close to political officers'.

In their evidence to IBAC, the Board President recalled Board member A talking to the Board about their contacts in the Premier's office. It appeared to them that Board member A was having conversations with government that neither they nor the board were privy to. The Board President recalled Minister Merlino's Chief of Staff telling them that they wanted Board member A to be involved in negotiations, a role the Board President considered would normally be the responsibility of MFB staff. The Board President told IBAC that they expressed their concerns regarding this process to Board member A, but was ultimately willing to accept the direction from the Minister's office, so long as Board member A was sharing information back to the board.

Board member A said in evidence that although they did not feel any pressure from government to convince particular board members to approve the EBA, they agreed that they were aware of the government's expectation that they try to move the board to the point where the EBA would be approved.

Board member A acknowledged to IBAC that they did not turn their mind to whether there was a conflict of interest between their role as a board member and their membership of the Labor Party. When asked in evidence, Board member A stated:

> ... it had not crossed my mind ... but once it was raised, then I did have a conversation ... it was Tony Bates I spoke to ... and there was no requirement ... to be a member or not be a member.

Board member A also did not consider that there was a conflict between their role and the expectations of government as delivered through their discussions with the Premier's advisor.

IBAC considers that Board member A should have taken proactive steps to formally declare and manage any conflicts of interest. Transparent disclosure helps to reduce the risk of actual or perceived corrupt conduct, and fosters trust in the leadership and operation of public entities.

65 Victorian Government 2014, *Appointment and renumeration guidelines for Victorian Government Boards*, Vic Gov, 6.5, 7, 7.3.

Appointment of Board member B to the MFB Board

On 2 January 2018, the MFB Board voted on the draft EBA. The vote was split. The Board President resigned following the vote and Board member A was subsequently appointed as the new Board President.

A draft text message retrieved from Mr Bates' mobile phone, dated 3 January 2018, recorded:

> Board met for 2 hours yesterday and were still tied at 3–3 and the President refused to use [their] casting vote. However, the board indicated that they were willing to write to Min Merlino [sic] saying they were deadlocked and seeking a direction on what to do.

Mr Bates' draft message continued, advising that the PPO and Minister Merlino's office had decided to seek legal advice on several issues including how quickly a seventh board member could be appointed to fill the remaining vacancy on the MFB Board before another vote could be convened 'ASAP'. The draft message stated that appointing a seventh member to the MFB Board was shaping up to be the government's preferred option, and that while Minister Merlino could direct the board, this approach was not favoured by the board. Mr Bates' draft message concluded by describing the deliberations as 'Whacky stuff'.

Board member B was appointed to the MFB Board on 10 January 2018. Their appointment was organised by PPO staff. PPO advisor A, who was not involved in the appointment process but was familiar with the appointments, told IBAC that the member had relevant experience on another state government board and was a change management expert. When asked whether the member was primarily appointed to support the EBA, PPO advisor A stated that the board members were made aware of the government's position on the EBA, and what the government expected them to do, but were not selected on that issue alone. Board member A, who was at that time also the MFB Board President, acknowledged in evidence to IBAC that the expediency of Board member B's appointment was surprising, although at the time it did not cause the concern it probably should have.

On 18 January 2018, the MFB Board approved the EBA. On 16 March 2018, the MFB workforce voted to endorse the EBA.

Side agreements and letters of comfort

During the negotiations for the MFB EBA, the government also sought to reassure the MFB and gain their support through letters of comfort and side agreements. These were undertakings concerning the implementation of the EBA made by the government to secure the agreement of the MFB, but which did not alter the clauses in the proposed EBA. These undertakings included, for example, promises to set up working groups to address key issues such as diversity, and to support the MFB to seek legal advice on their commitments under the EBA during the implementation of the agreement. PPO advisor A said in evidence that part of the reason for these documents was because Mr Marshall 'couldn't ever get his head around changing text in the agreement'.

On 22 December 2017, Mr Bates sent a Cabinet-authorised letter of comfort for the Board President. The letter set out how in early 2018, an interdepartmental committee, led by the Secretary of the Department of Justice and supported by the MFB and the CFA, would work to develop a detailed understanding of the strengths and challenges of the fire services EBAs and identify options to improve and simplify future EBAs.

Board member A said in evidence that the letter had been important to the board:

> I had some comfort ... that we would be allowed to negotiate the 2019 agreement, not quite from scratch, but as a genuinely new agreement rather than a rollover or even a worsening of conditions from the 2016. That was one of the things that [the Board President] was particularly concerned about and that it would be irresponsible for us to sign up to 2016 agreement without some understanding that we would get a better shot at negotiating properly the next time.

The Secretary of the Department of Justice gave evidence that the interdepartmental committee 'may have met about three times', with Mr Bates in attendance at one of those meetings.

As previously noted, following the appointment of a seventh board member, the MFB Board voted in favour of the draft EBA. When asked in evidence about the new board member's approach to voting on the EBA, Board member A, who was serving as MFB Board President at the time, explained that the new member seemed interested in moving forward rather than standing still in dispute. Board member A opined that the new member had a pragmatic view of the EBA and understood that a lot of people had given the EBA 'a red hot go' but that 'we've just got to move forward and build some trust so that we can have a decent shot at the 2019 agreement'.

Despite the importance of the government's commitment to negotiate a new EBA in 2019 to securing MFB Board support for the draft EBA, the commitment was not ultimately honoured. When asked in evidence about the commitment to renegotiate the 2019 EBA, Board member A said that 'the approach to the 2019 agreement was to be a fresh approach ... rather than a rollover of the 2016 agreement,' but when Minister Neville replaced Minister Merlino as the Emergency Services Minister after the 2018 election, Minister Neville 'altered that position and said that in her view the 2016 agreement would form the basis of the 2019 agreement'. When MFB was replaced with FRV in 2019 the arrangements in the MFB EBA were transferred into a new FRV EBA.

3.4.4 FWC certification of the MFB EBA

To finalise the EBA, the MFB Board applied to the FWC for approval as required under the FW Act. On 15 January 2019, the FWC handed down its decision. The FWC found that the agreement did not include terms that were directly discriminatory against an employee covered by the agreement. The decision explained that the FWC applied a previous Federal Court of Australia ruling to inform its decision which limited the application of a section of the FW Act so as to not cover indirect discrimination. The FWC stated that it would have arrived at a different conclusion had it not been for the prior ruling.

Despite this, the FWC refused to approve the EBA as it was not satisfied that a clause which provided for the UFU to receive a copy of any written request by an employee for flexible work accorded with the National Employment Standards. The FWC said that there was 'no rational basis' to justify this requirement and that it was 'frankly abhorrent' that an employee requesting flexible work due to experiencing family violence should have to advise the UFU in writing of that fact.

The MFB was given 21 days by the FWC to provide a written undertaking to meet the FWC's concerns. On 18 February 2019, following receipt of an undertaking from the MFB that addressed the FWC's concerns, the MFB EBA was approved. Mr Marshall sent a text to Mr Bates later that day to inform him of the outcome and to thank him for all his hard work.

3.4.5 Mr Marshall's bargaining power and leverage

Based on the evidence set out below, IBAC found that the undisclosed negotiations Minister Jennings and Mr Bates' had with the UFU, and the government's actions in the months afterwards to maintain the terms of the agreed to 'UFU proposal', undermined the MFB's bargaining power in the same way that it had undermined the CFA's bargaining position. MFB CEO A and Minister Jennings gave evidence to IBAC that it was intended that the CFA and MFB EBAs be consistent, noting that the two agencies operated in a similar environment and the UFU was a party to both agreements. Discussing the EBAs, Minister Jennings stated 'it was intended for them to mirror one another'. Further, MFB CEO A stated,

> ... the CFA ended up in a process where they had agreed to a large proportion of the log. That left MFB in a significantly compromised position because the UFU had a reasonable expectation that if you've agreed to all these things over here in a parallel environment, they should be applicable over here ...

Board member A gave evidence that from when they joined the MFB in 2017 there was no movement from the UFU on anything. In their view, the UFU was not genuinely bargaining on the terms of the agreement, even on inconsequential matters. Board member A reflected that they had not previously fully understood the bargaining power that the UFU had.

IBAC found that the government was generally not willing to risk upsetting Mr Marshall by supporting attempts to change clauses in the draft agreement. When asked about the government's support for their bargaining efforts, Board member A noted that:

> ... every time we put up a suggested amendment the answer was no, Peter will not – not agree to change the agreement. If you can think of some other way of getting the comfort you want, we're happy to talk about that but he won't change the agreement.

Board member A said this message was being communicated to them from the PPO and Mr Bates.

In his examination by IBAC, Mr Bates was asked whether, on reflection, he thought that if he was to enable the board members to properly understand their position and how they should approach contentious clauses, he should have disclosed that the government had already given Mr Marshall an indication that it was going to implement the draft EBA as Mr Marshall had proposed it. Mr Bates agreed with this proposition. Mr Bates went on to state that he considered that the government was justified in its actions as the fire services were ignoring government policy that required agencies to maintain up-to-date enterprise agreements and that '[i]t's not a create your own adventure because you've got a Board ...'

IBAC found that when the government did attempt to make material changes to the terms of the draft EBA, it quickly backed down under pressure from Mr Marshall. Mr Bates recalled attempting to add a clause that said that neither party could 'unreasonably withhold agreement' into the MFB EBA in relation to the consult and agree issue: 'whenever we got to that, Mr Marshall would go, "a deal is a deal, is a deal, is a deal. We've got to deal with the wording that's already there"'.

IBAC notes that as an independent statutory entity, the MFB was designed to operate at arm's length from the government of the day. During the course of its investigation, however, IBAC identified a troubling instance of political interference in MFB operational matters, where the government placated Mr Marshall by directing the MFB to cease using a lawyer that Mr Marshall did not like.

On 10 May 2018, Board member A, who was at that time the Board President, received a letter via email signed by the Secretary, Department of Justice and Regulation, directing the MFB to cease using a particular law firm along with an instruction to use a different named firm. Board member A responded the following day, advising that they were treating the letter as a ministerial direction.

Based on the evidence set out below, Operation Richmond established that the direction followed pressure being placed on the government from Mr Marshall, who considered the lawyer assisting on the negotiations to be anti-union. When asked in evidence about why the direction was given to change lawyers, Board member A said:

> Peter Marshall does not like [the lawyer] and didn't want [them] representing MFB, and as I understand it, the Department or the Minister potentially, felt that was going to be a distraction and asked us to use [another law firm].

In their evidence to IBAC, PPO advisor A said that although the lawyer was providing 'fantastic advice', 'unfortunately we were unable to keep using [their] advice because Peter was like literally losing his mind'. PPO advisor A recalled telephone conversations with Mr Marshall about the lawyer:

> Like I remember he would – he would just call me and call me a 'fucking c***, rat c***'

In response to a draft of this report, Mr Marshall denied using this language.

IBAC heard conflicting accounts about the instruction to discontinue using the lawyer. PPO advisor A told IBAC in evidence that the instruction was the result of a collective decision, reached between the Department of Justice and Regulation, Minister Merlino's office and the Premier's office. They said that the government needed to get Mr Marshall to 'a point of agreement' and that it was never going to happen while the lawyer who Mr Marshall disapproved of was on their team.

In his evidence to IBAC, Mr Bates said that he made the call, and that he did not think it was endorsed by the Minister. He said that, while he did have a concern about the quality of the law firm's advice, in retrospect he regretted the decision and if he had the chance again, he would have tried not to repeat it. IBAC considers that regardless of whether it was a collective decision or a decision made by Mr Bates alone, the direction represented improper interference in the direction of the MFB Board.

3.5 Establishment of FRV (2017–19)

3.5.1 Overview

Operation Richmond commenced in November 2018 shortly before the FSLAR Bill 2019 was re-introduced and passed in the Victorian Parliament after having been initially defeated in the Upper House in March 2018. During its investigation, IBAC obtained evidence that gave rise to a further suspicion of corrupt conduct related to the passage of the FSLAR Bill 2019 and the change in leadership at the MFB and FRV. The scope of Operation Richmond was widened to investigate these matters.

As previously stated, IBAC did not substantiate these allegations. However, as set out below, IBAC did find evidence of highly inappropriate behaviour engaged in by senior public officers in the context of the fire services reforms in 2018 and 2019 that presented corruption risks.

IBAC found that Mr Marshall sought to shore-up a crossbench MP's support for the FSLAR Bill 2019 by employing their relative in the days leading up to the vote on the reforms. IBAC also found that Minister Neville, who was at that time the Minister for Emergency Services, was aware of the employment offer (see section 3.5.3).

IBAC found that Mr Marshall was provided privileged access to Minister Neville during the transition from MFB to FRV, and that he sought to influence her decision in the appointment of Victoria's first Fire Rescue Commissioner (see section 3.5.4). Additionally, IBAC found that an MFB Board member, Mr Greg Sword, shared confidential information with Mr Marshall in 2019 in breach of his professional obligations (see section 3.5.5).

IBAC considers that, while the conduct identified in section 3.5 may be capable of enabling, facilitating or resulting in corrupt conduct, IBAC could not establish that the identified conduct met all required elements to make findings of corrupt conduct under the IBAC Act.

3.5.2 Background to the introduction of the FSLAR Bill 2017

The Federal Coalition Government introduced new workplace laws soon after their re-election in 2016. The laws provided for volunteers to have a say in workplace agreements. However, the CFA EBA in the form approved by the board was incompatible with these introduced requirements and did not progress to a vote of CFA employees.

In her evidence to IBAC, Ms Neville said that the Victorian Government therefore decided to split volunteers and career fighters into two separate organisations. MFB and CFA career firefighters were to be merged together to form FRV, and the CFA was to be reconstituted as a fully volunteer firefighting service.

The split was to be achieved through the passage of the FSLAR Bill 2017. While the Bill provided for the restructuring of the fire services, it also established presumptive rights for eligible firefighters, providing simpler access to compensation for firefighters diagnosed with certain firefighting-related cancers.[66] As mentioned in section 2.2.1, the introduction of presumptive rights legislation was one of Labor's election commitments to the UFU made prior to the 2014 state election.

A 2015 Victorian government-commissioned review of Victoria's fire services had previously recommended bringing the CFA and MFB together under a single board.[67] The government responded in March 2016, accepting 18 of the review's 20 recommendations, but rejecting this proposal. The government's decision not to merge the boards was publicly criticised by Mr Marshall. In a news article published on 16 March 2016, the media reported Mr Marshall as having said, 'What's the point of a review if the government doesn't act on the recommendations as specified, in particular that one about the board'.

66 Explanatory Memorandum, Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (Vic) pp 1–2.
67 Victorian Government 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, David O'Byrne, Vic Gov, Victoria, Recommendation 14, p 62.

As set out below, IBAC found that Mr Marshall was supportive of this new direction for the fire services envisioned through the FSLAR Bill 2017. IBAC heard evidence from MFB CEO B, appointed in 2018, that FRV was 'an industrial solution' designed to ensure all the UFU membership involved in operational firefighting came under the one EBA.

Detailed work on the FSLAR Bill 2017 began in January 2017, led by DPC and informed by an expert advisory group. While the Bill passed the Lower House, it was defeated in the Upper House by one vote in March 2018.[68] The ALP went to the state election in November 2018 with a commitment to reintroduce the Bill. Following the government's re-election, as previously stated, Minister Neville replaced Minister Merlino as Emergency Services Minister and became responsible for supporting the passage of the Bill through Parliament and leading the transition of the fire services. The FSLAR Bill 2017 that went before Parliament in 2017 was re-tabled on 29 May 2019 as the FSLAR Bill 2019.

3.5.3 Mr Marshall employs the relative of a crossbench MP ahead of vote on FSLAR Bill 2019

In the course of Operation Richmond, it came to IBAC's attention that the circumstances in which the FSLAR Bill 2019 was passed by the Legislative Council was the subject of comment by Mr Marshall, which could be read as impeaching the conduct of a member of the Legislative Council. IBAC does not purport to impeach, question or otherwise examine the conduct of a member of the Legislative Council.

IBAC found that Mr Marshall worked to shore-up votes in favour of the FSLAR Bill 2019. There is nothing untoward in that ambition, nor in an interested stakeholder such as Mr Marshall assisting government to fulfil that objective. However, based on the evidence set out below, IBAC found that Mr Marshall offered to employ a crossbench MP's close relative after becoming aware that they needed a job. IBAC found that Mr Marshall intended that the arrangement would guarantee the MP's vote in favour of the Bill and encourage them to lobby other crossbenchers to join them.

Background to the vote in the Legislative Council

In November 2018, Labor was returned with an increased majority in the Lower House but remained without a majority in the Upper House. The government therefore needed four of the 12 crossbench votes in the Upper House for the Bill to pass. Ms Neville said in her evidence to IBAC that she spoke to Mr Marshall about the importance of the UFU's role in talking to crossbenchers. She said that this was no different to the role other unions would play in such circumstances.

In their evidence to IBAC, the crossbench MP said that they were being lobbied by both sides of government and that they had received hundreds of emails from the public and members of the CFA both for and against the Bill.

Ms Neville and Mr Marshall gave evidence that the crossbench MP voiced their support for the Bill when the MP first met Mr Marshall at a UFU Christmas barbecue in December 2018. Ms Neville stated, 'I would never presume but I was absolutely confident [they were] in the yes camp'. Ms Neville said that from December she was confident that she had three of the four votes needed, which included the crossbench MP.

Mr Marshall told IBAC that as the crossbench MP had indicated in December 2018 that they were going to vote in support of the Bill, it was more their influence with the other crossbenchers that he sought. Mr Marshall said that while the MP's vote and rapport with other crossbenchers were important, any of the crossbenchers would have had the balance of power.

On 22 May 2019, Minister Neville and a ministerial advisor met with the crossbench MP at the Minister's request. In evidence, Ms Neville said that she could not specifically recall the meeting, but noted that she met with individual members of Parliament that were not part of the ALP on controversial Bills and this was something that occurred for about 80 percent of controversial Bills. She agreed that crossbenchers had leverage when it came to their vote regardless of what they actually thought of the Bill.

68 Parliament of Victoria, *Parliamentary Debates*, Legislative Council, 29 March 2018, 1374.

On 29 May 2019, when Minister Neville re-introduced the Bill into the Lower House, the crossbench MP told IBAC that they had decided by this time that they would support the Bill. They said it was not unusual for them to commit to a position prior to the legislative process commencing if they had had sufficient opportunity to examine the Bill and come to a conclusion. That morning, the crossbench MP sent a text to Minister Neville to say that they would vote in favour of the Bill 'as promised' and that they had been 'discreetly trying to gauge the crossbench and perhaps change a few minds'.

Mr Marshall offers to employ a crossbench MP's close relative

This section details an offer Mr Marshall made to employ the crossbench MP's close relative to ensure their support for the FSLAR Bill 2019. IBAC does not purport to impeach, question or otherwise examine the conduct of the crossbench MP as it related to their conduct as a member of the Legislative Council.

On 30 May 2019, the day after the FSLAR Bill 2019 was introduced in the Upper House, the crossbench MP became aware that a close relative needed to find employment. The MP told another relative via text, that they would find them a job as 'a few people owe me favours'. The crossbench MP could not recall the specific people they were referring to or had later called, but suggested that they may have been people the MP had mowed lawns for or helped with plastering.

On 31 May 2019, Mr Marshall and a colleague met the crossbench MP at Parliament House. Mr Marshall's colleague sent a text to the crossbench MP that morning to confirm the meeting: 'Confirming 12.30 pm meeting at Parliament House with Peter today?'

In their evidence to IBAC, the crossbench MP could not recall who had asked for the meeting but said they thought that it followed on from a meeting they had had with the organisation for volunteer firefighters and that 'it doesn't go unnoticed in political circles when you are meeting with individual sides'. As previously noted, the crossbench MP had already indicated to Mr Marshall their support for the Bill at the UFU Christmas barbecue in December and two days earlier confirmed to Minister Neville that they would be voting in favour. The crossbench MP gave evidence that the meeting's purpose was to discuss the Bill and to confirm their position, stating '[t]hey want confirmation … they always want to come back to you – to make sure that you haven't wavered'.

The crossbench MP told IBAC that during the meeting they had engaged in general conversation with Mr Marshall, during which they told Mr Marshall about their relative's predicament.

The crossbench MP said in evidence to IBAC that the UFU offered to consider the relative for a position at the UFU:

> … I don't remember whether it was Marshall or whether it was [Mr Marshall's colleague] – said, 'well, look, there's something that might be coming up … it probably fits within your [relative's] qualifications … would [they] be interested?'.

On 5 June 2019, the crossbench MP's relative started their new job with the UFU. Information obtained from a lawfully intercepted phone call at 6.37 am that morning, prior to the crossbench MP's relative arriving at work, establishes that the role offered was not to fill an existing vacancy. Rather, the duties of the new role were picked spontaneously during the call in which Mr Marshall and a colleague discussed how to explain the relative's presence and previous work experience when they arrived at work that day:

> Peter Marshall: Well, [they're] coming, [they're] a, what are [they]?

The conversation continues, with Mr Marshall suggesting the relative could help the colleague out with FRV:

> Peter Marshall: But we've – but we're putting [them] on to assist with, the, uh … what [do they] want to do?
>
> UFU colleague: I don't know, I've spoken to [them about their skills] but [they're] happy to do anything.
>
> Peter Marshall: Oh, well, we'll just say we put [them] on to help you with FRV, yeah? All right?

On 6 June 2019, in a lawfully intercepted phone call with a colleague, Mr Marshall said that the [FSLAR] Bill 2019 was being voted on that afternoon and that, '[the crossbench MP]'s solid, [their relative's] working in our office, so that's good'.

Another lawfully intercepted phone call captured Mr Marshall on 7 June 2019 telling a friend that he had offered to employ the relative to ensure the crossbench MP's vote:

> So the Bill passed Lower House today and tomorrow it goes for the second reading speech in the Upper House and that's pretty significant mate … Let me say something to you very confidential, [the crossbench MP] is 100 per cent behind us … just to make sure we just employed [their relative] … now you understand how I work … so if there was ever a doubt – which there wasn't, – now there is absolutely no doubt.

In their evidence to IBAC, the crossbench MP did not consider that there was a perceived or actual conflict of interest in their voting in favour of the Bill, when their relative was recently employed by the UFU.

Minister Neville's knowledge of Mr Marshall's offer

IBAC identified that on 31 May 2019, shortly after Mr Marshall met with the crossbench MP, he phoned Minister Neville. The conversation was captured during a lawfully intercepted phone call. In the call, Mr Marshall claims he's 'done [the crossbench MP], 100 per cent solid, got [their] speech written' and explains that Minister Neville 'can't repeat this', but he was 'doing [the crossbench MP] a favour' and offered to hire the crossbench MP's relative after finding out that they were in need of a job. Minister Neville and Mr Marshall subsequently joke about the legitimacy of the arrangement:

> Peter Marshall: It was a considered deliberation between … the skills subcommittee of our branch committee for the Board and a recommendation to the Board, mate, so … and it was on merit too cause there was two other applicants. [laugh] … Do you believe a word I just said? [laugh]
>
> Minister Neville: Yeah, I absolutely believe everything, I do, I do. For anyone listening in I believe – 100 per cent believe that [laugh] …

The recording of the conversation was played to Mr Marshall and Ms Neville in their respective examinations. In his evidence, Mr Marshall rejected the proposition that the conversation showed that both he and Minister Neville recognised that the agreement between himself and the MP was inappropriate.

It was put to Ms Neville that the reason she joked about Mr Marshall's employment of the relative was because the job had a slight edge of corruption to it. Ms Neville accepted that could be the interpretation but said that her response was similar to the way she generally engaged with Mr Marshall, which required a level of banter to maintain the relationship, such as in this instance.

Ms Neville gave evidence that she probably did not consider it her responsibility to oversee how Mr Marshall conducted himself with a Member of Parliament. Ms Neville told IBAC that while it would concern her if an offer made to the crossbench MP was in some way connected to the way in which the MP decided to vote, at the time she became aware of Mr Marshall's offer the crossbench MP was already supporting the Bill. Ms Neville's view was that her ability to influence the UFU, even if she wanted to, would be 'miniscule', and that it would not change the vote anyway.

IBAC does not purport to express a view about the merits or substance of the evidence of Mr Marshall or Minister Neville as to their assessments of whether the offer of employment to a relative would influence the vote of the crossbench MP. IBAC also does not make or infer any adverse comment regarding the crossbench MP's relative.

3.5.4 UFU access and influence during the appointment of the FRV Commissioner

Based on the following evidence, IBAC found that Mr Marshall sought to influence the selection of Victoria's first FRV Commissioner by undermining MFB CEO B and then by promoting his preferred candidate to the Minister. Mr Marshall had previously supported the candidate's selection in the appointment process for the MFB CEO in early 2018 which was managed by the MFB Board and overseen by Minister Merlino. The candidate was interviewed but did not get the job. Eighteen months later in December 2019, and under the leadership of Minister Neville, the candidate was appointed as the FRV Commissioner.[69]

Minister Neville said to the media at the time and in her subsequent evidence to IBAC that she did not consult with Mr Marshall about the appointment. IBAC found that while Minister Neville might not have deliberately sought out Mr Marshall's advice about the appointment, they did discuss the appointment, and Mr Marshall was provided with ample opportunity to attempt to influence the decision in his favour (see section 3.5.4).[70]

The events surrounding the appointment of the FRV Commissioner further demonstrate how the risk of improper influence present in relations between a Labor government and an associated union can be exacerbated through poor stakeholder management and a lack of transparency. These risks are discussed further in chapter 4.

Selection of the new MFB CEO

Background to the appointment of the MFB CEO

Following the resignation of MFB CEO A in July 2017, an international search began in early 2018 to hire a new CEO. The position was a board appointment subject to ministerial approval.[71] At the time, the government intended for the new CEO to transition to the head of FRV if the FSLAR Bill 2019 was passed. This was reflected in the role's position description:

> ... the successful incumbent should be assured that the appointment will be supported by both the Board and the State Government and this role is expected to lead the organisation irrespective of legislative change or the current arrangements continuing.

In their evidence to IBAC, Minister Neville and Mr Bates stated that during this period Mr Marshall advocated strongly for his preferred candidate, a Canadian Fire Chief, to be selected for the role. When asked in evidence, Minister Neville said that Mr Marshall had discussed his view with her that the Canadian Fire Chief should be appointed the MFB CEO, 'four or five times'. Minister Neville continued to state:

> I knew [the Canadian Fire Chief] was the candidate that Peter wanted because he had told the public that. He had told the former Minister that. He had told me when I wasn't the Minister. When the [MFB CEO B] got the job. He – there was no secret about it, that the [Canadian Fire Chief] was his preferred candidate.

In a 2019 radio interview, the Canadian Fire Chief stated that they were an acquaintance of Mr Marshall's having first met in 2011 in the context of presumptive rights legislation. The Canadian Fire Chief had prior tenure for three terms as president of their relevant Canadian firefighters' union.

Mr Bates told IBAC that Mr Marshall had been 'shopping around' the Canadian Fire Chief's resume, handing out copies. Mr Bates also had a recollection of Mr Marshall arranging for his candidate to meet with ministers. IBAC similarly heard from PPO advisor A that Mr Marshall had likely contacted them 20 to 30 times to suggest that the government politically interfere in the process and appoint Mr Marshall's preferred candidate to the role. PPO advisor A said that they and Mr Bates told Mr Marshall that it was a decision for the MFB Board; they would not get involved.

While the Canadian Fire Chief was one of three people interviewed for the role, they were not successful. The Secretary of the Department of Justice, who was a member of the interview panel, recalled to IBAC that while the Canadian Fire Chief did 'okay' in presenting their skills and experiences, they were not the strongest applicant.

69 IBAC notes that the Fire Rescue Commissioner resigned on 29 March 2023.
70 In particular, see section 3.5.4, 'Minister Neville's management of Mr Marshall'.
71 *Metropolitan Fire Brigades Act 1958* (Vic) (Authorised Version incorporating amendments as at 1 November 2016) s 28.

The interview panel unanimously selected a Chief Fire Officer from the UK. The candidate was offered the role in March 2018, after which they sought and received an assurance that they would lead the transition to FRV. Although the FSLAR Bill 2017 was defeated in the Upper House on 30 March 2018, the MFB Board President responded to the candidates' recruiters two days later to confirm their intention for the CEO to be the FRV Commissioner if the legislation passed. Mr Bates gave evidence that Minister Merlino was supportive of this commitment. The candidate signed a standard government executive contract and moved their family from the UK to Australia.

Mr Marshall's disappointment in the government's decision

Mr Marshall told IBAC that Mr Bates had given him a commitment that there would be a fair selection process, but that in the end Mr Bates had nothing to do with it. Mr Marshall also contended in evidence that the appointment was not merit-based as the Canadian Fire Chief was the best candidate. IBAC found that Mr Marshall was profoundly disappointed in the decision. As set out below, he expressed his frustration through public expressions of betrayal and thinly veiled threats against the government.

In a radio interview on 18 April 2018, Mr Marshall sought to discredit the incoming MFB CEO B. Mr Marshall stated that the CEO was an 'attack-dog against the union and its members', and that [they] had 'engaged in union-busting activities over in the UK'. This is the same interview which spurred media suspicion that Mr Marshall had blackmailed the Premier. IBAC reiterates that it found no evidence for the alleged blackmail and did not substantiate the allegation that Mr Marshall had blackmailed the Premier.

In the interview, Mr Marshall threatened to disclose secret promises made to him by the Premier and Minister Merlino and demanded that these promises be kept. Mr Marshall stated:

> ... yeah, it's a matter of time, the truth will come out about Daniel Andrews and James Merlino's role in this and exactly why they've actually chose to, uh, engage in an extremely provocative appointment.

When pressed for clarification about what the 'secret promises' were, Mr Marshall said, 'uh, well, there was a number of promises and they will come out in the near future'. When asked if the promises were going to come out before the election, Mr Marshall replied, 'Oh, absolutely'.

Later in the interview, Mr Marshall confirmed that firefighters would not be helping out at election time by doorknocking or handing out how-to-vote cards, and stated that 'what I want to try and ... communicate now is the absolute devastation that firefighters feel today because of the broken promises'. These comments demonstrate Mr Marshall's public attempts to influence the government through thinly veiled threats of industrial action and the withholding of campaign support.

That same day, Mr Marshall issued a UFU bulletin setting out why the new MFB CEO B was unsuitable, alleging that the CEO had used budget cuts in the UK to promote union-busting. He said that the UFU had been assured it would be consulted prior to any appointment and that there had been a breach of trust.

In their evidence to IBAC, both Mr Bates and Minister Neville (who was at that time not yet the Emergency Services Minister) said that Mr Marshall had individually contacted them to complain about the appointment. Mr Bates recalled Mr Marshall contacting him to attempt to have the appointment rescinded. Ms Neville said in her evidence that the most she would have done would have been to pass the message on to Minister Merlino and his office.

In evidence to IBAC, Board member A was asked about whether there was a plan in place to manage Mr Marshall's reaction to MFB CEO B's appointment. Board member A stated that they gave radio interviews and communicated with employees to reassure staff of the incoming CEO's suitability. When asked about whether this level of communication was common practice, Board member A told IBAC that from their experience with other unions, this level of communication was 'not unusual in the context of the UFU and its relationship with fire services but ... absolutely unusual in terms of common practice' given the proper and transparent appointment process utilised.

In their evidence, MFB CEO B said that when they subsequently met Mr Marshall, they made the point that they had had no control over the budget allocated by the UK Government. Open source information establishes that austerity measure cuts resulted in job losses and station closures during the new CEO's seven-year tenure as Chief Fire Officer of Merseyside, UK. Media reports and statements from the local Fire Brigades' Union during that period noted that the fire and rescue services had faced difficulties from the cuts, and that the Chief Fire Officer had been a vocal opponent of those cuts.

Commencement of the new MFB CEO

MFB CEO B commenced on 28 May 2018. In their evidence to IBAC, the CEO said that upon their arrival into the role they were confronted with significant challenges.

IBAC heard evidence from MFB CEO B that 'it is impossible to run a fire and rescue service with the consult and agree provisions' and there were 'operational issues we need to address'. MFB CEO B told IBAC that coupled with the UFU predisposition against them, they found themselves in a situation they described as ludicrous. The CEO said that the situation did not improve after the appointment of Minister Neville to the emergency services portfolio:

> ... the Minister was just as bad, if anything more hostile towards me [than the UFU]. Anything that was going to upset the UFU – off limits.

Mr Marshall's strategy to influence the selection of the new FRV Commissioner

Based on the evidence set out below, following MFB CEO B's appointment, Mr Marshall sought to ensure that his preferred candidate, the Canadian Fire Chief, would be selected as the FRV Commissioner rather than the MFB CEO.

Although Mr Marshall's preferred candidate had been unsuccessful in applying for the MFB CEO position, Mr Marshall stayed in contact with them. In a lawfully intercepted phone call on 28 May 2019, Mr Marshall provided the Canadian Fire Chief with updates on the progress of FRV, noting that the FSLAR legislation was going through the following morning, and that the Minister wanted the Bill in force by the end of July. During the call Mr Marshall asked if the Canadian Fire Chief could provide him with some more examples of work initiatives and 'major programs' they had worked on to help strengthen their CV. Mr Marshall gave the candidate some examples of the sorts of initiatives they should reference, raising that the candidate had implemented mentoring programs as part of a past role. Mr Marshall told his preferred candidate, 'I wanna try and build you up to the point where it's impossible not to take you'.

In another lawfully intercepted phone call on 20 March 2019, Mr Marshall told a contact in MFB that he had had a meeting with 'the Minister'. He reported that the Minister had expressed concern about the Canadian Fire Chief's application for FRV Commissioner because the candidate had been unsuccessful in the previous recruitment process for the MFB CEO position and she was worried about 'the narrative'.

Mr Marshall recounted that he subsequently told the Minister that a rumour had gone around that the Canadian Fire Chief had withdrawn from the previous recruitment, and noted that this meant the Canadian Fire Chief could now say that their circumstances had changed. Mr Marshall told his MFB contact that at the end of meeting, a ministerial advisor walked him out and said, 'well, [they'd] definitely be in the mix, so that means there'd be an interview process ... but the Minister's a long way away from even considering that'.

IBAC found that Mr Marshall disclosed internal MFB matters to Minister Neville to undermine MFB CEO B. In a lawfully intercepted phone call on 24 June 2019, Mr Marshall told Minister Neville about who she could trust on the MFB Board, 'you've only got two you can trust on that board, you know that?' Continuing the call, Mr Marshall told Minister Neville about MFB CEO B's leadership style, attitude to women and general behaviour, noting, '[their] language has been atrocious'. Mr Marshall also told Minister Neville about MFB employment matters and challenged MFB CEO B's capability:

> ... they didn't have enough money in the bank to pay the wages at Christmas time, mate. They had to go ... get a float ... that's how incompetent [they are] as a CEO.

At the end of the call, Mr Marshall shows that he is aware that he shouldn't be disclosing the information, stating: 'we know nothing – like, we know nothing,' and 'you didn't get it from me either, mate, yeah?' In response Minister Neville laughs, and says, 'No, no,' to which Mr Marshall responds, 'Yep – no well I'm serious'.

In another lawfully intercepted phone call on 17 July 2019, Mr Marshall can be heard explaining to an overseas colleague how he had shared MFB information with Minister Neville after finding out that MFB CEO B had engaged consultants for advice on MFB operational matters. In the call, Mr Marshall says:

> ... rather than go public and have a public fight about it, I went to the Minister and, um, I said to the Minister, I said, 'Well, I told you [the CEO] was a toe-cutter, I told you [they were] no good. This is what [they] did ... even worse [they've] now bought out the consultants on your money to actually produce a report.

These lawfully intercepted phone calls provide clear examples of Mr Marshall's concerted efforts to discredit the MFB CEO B in the eyes of the Minister.

In her evidence to IBAC, Ms Neville said that she never pro-actively sought information from Mr Marshall. She explained that Mr Marshall had sources in the CFA and MFB who provided him with information, which he would then share with her, but that she never requested the information. She also told IBAC that she did not accept everything Mr Marshall said on face value and that she had formed her own view about MFB CEO B early on based on her own interactions with them.

Minister Neville's decision to not appoint MFB CEO B

Based on the evidence set out below, IBAC found that Minister Neville came to the conclusion that MFB CEO B was not suitable to lead FRV and then shared her unfavourable views about them with Mr Marshall in private. Minister Neville subsequently reopened the selection process for the new Commissioner position and Mr Marshall used this opportunity to continue promoting his preferred candidate.

Ms Neville told IBAC in evidence that she came to her conclusion about MFB CEO B based on her own experience with and observations of the CEO, independent to Mr Marshall's urging. She said that, in her view, MFB CEO B was not very good at their job and lacked real experience.

IBAC makes no finding about Ms Neville's state of mind at the time she made her decision and whether Mr Marshall did in fact influence her decision. IBAC is, however, critical of Ms Neville's stakeholder management of Mr Marshall, which afforded Mr Marshall privileged access and opportunities to advocate for the Canadian Fire Chief.

On 12 June 2019, in a lawfully intercepted phone call, Minister Neville and Mr Marshall discussed that MFB CEO B would not get the FRV Commissioner role:

> Peter Marshall: And oh – I mean at the end of the day – I mean [they] must realise [they're] not the preferred candidate. [They] may be a candidate but –
>
> Minister Neville: Yeah, I – I mean I'd absolutely let [them] be interviewed but [they're] not getting it. They're just not getting it [laughs]
>
> Peter Marshall: Yeah, I know, but – but – but just so – just in case –
>
> Minister Neville: Like that – that's one thing I do know
>
> Peter Marshall: – just in case there's listeners here, on merit [they] wouldn't get it. [laughs]
>
> Minister Neville: Oh yes [indistinct] that's the only reason. Absolutely. That's my experience of it –
>
> Peter Marshall: [Laughs] Yeah, that's right [laughs]

Minister Neville and MFB CEO B attended a news conference together on 21 June 2019 where the Minister said that she intended to advertise the FRV Commissioner role. Ms Neville gave evidence that the CEO resigned afterwards as the CEO had assumed they would receive the position without a process.

In the lawfully intercepted phone call dated 12 June 2019 previously discussed above, Minister Neville and Mr Marshall discussed MFB CEO B. Minister Neville told Mr Marshall:

> ... [they are] not getting this job for a very good reason, that [they] would mess up the implementation in my view of – of setting up FRV .... it'd just be a nightmare.

Earlier in the same call, Minister Neville spoke of a recent board meeting where MFB CEO B left early and appeared upset. Minister Neville concluded the call suggesting, 'it's all going to move pretty quickly from today'. Mr Marshall said, 'we'll just look shocked ... [and say] 'we actually had a great relationship with [them] ... I can't understand why [they've] done this'. Minister Neville replied, 'Yeah, uh just keep it slightly credible'.

MFB CEO B resigned on 12 July 2019 after 13 months in the role. In evidence, Mr Bates said that the CEO was 'an outstanding individual and [their] loss is a great loss for the State.'

In a lawfully intercepted phone call on 29 June 2019, Mr Marshall updated the Canadian Fire Chief on the circumstances surrounding MFB CEO B's departure. Mr Marshall said:

> ... [they're] gone ... finished ... that's job completed. So we've got FRV ... we got rid of [the CEO] and we've got presumption laws and now we've just got to get you over here somehow ...

Mr Marshall confirmed the Canadian Fire Chief's upcoming visit to Australia for the 'FRV ball' and said, 'we'll be paying for it'.

Ms Neville told IBAC that she was a speaker at the ball, which was held in September 2019. Her ticket was paid for by the UFU. Ms Neville said that this was not unusual and that it was not a declarable gift as it cost less than $500 and was a work-related event. Ms Neville told IBAC that she was caught off guard when Mr Marshall introduced her to the Canadian Fire Chief at the ball: '... he took me to a table and I had to shake hands with [the Canadian Fire Chief] but that was fine. That was all he did'.

In the lawfully intercepted phone call between Mr Marshall and an overseas colleague on 17 July 2019 described above, the colleague discussed MFB CEO B's resignation and the looming FRV Commissioner appointment:

> Peter Marshall: ... you know, like, all the media is saying, 'Oh, the union got rid of [the MFB CEO]', but they can't prove anything. [laughs] ...
>
> Colleague: ... it's not something you can jump on and say, 'Of course we got rid of [the MFB CEO]', but your members will know you got rid of [them]. Like, you must be a God out there now ... all it takes is for you to bring [the Canadian Fire Chief] out now and then, ah, holy fuck –
>
> Peter Marshall: Yeah ... Then we've got everything ...

The announcement of the FRV Commissioner

On 4 December 2019, Minister Neville announced the appointment of the Canadian Fire Chief as the Fire Rescue Commissioner. IBAC heard evidence that Mr Eccles, the DPC Secretary, chaired the selection panel for the role and that the panel initially interviewed four candidates, before shortlisting two candidates for a final round of interviews, one of whom was the Canadian Fire Chief. The panel provided their recommendation to Minister Neville.

When asked about the subsequent appointment of the Canadian Fire Chief, Mr Eccles stated that the Canadian Fire Chief was not 'preferred by the panel' but had been found suitable. Mr Eccles qualified that the Minister had exercised her prerogative to look at a couple of the candidates directly, which was not unusual, and that ultimately it was not his decision to make. His role was to advise.

Minister Neville's management of Mr Marshall

At a news conference on the day of the announcement, Minister Neville stated, 'I said I was not going to consult with the union; I have not consulted with the union'.

In evidence to IBAC, Ms Neville disputed that she had discussed the appointment of the Canadian Fire Chief with Mr Marshall and maintained that, for example, when Mr Marshall told her he had given [the Canadian Fire Chief's] resume to a ministerial advisor, 'that's him passing information to me'. Ms Neville said that she had made no commitment to Mr Marshall in respect of his preferred candidate, just that the best person was going to get the job.

When asked by IBAC whether her news conference statement about not consulting was misleading, Ms Neville stated:

> ... I did not consult with Peter. Yes, he pushed his case. Absolutely he pushed his case. ... people put candidates in front of you all the time ... you nod your head. You say thank you, there's a process ... I don't see that as consulting.

Ms Neville stated that though she thought Mr Marshall 'was never going to agree to anyone else', she was also willing to make a different decision, 'because there was a lot riding on this organisation'. Ms Neville gave evidence that she had a job to do and had to use her best judgment on how she was going to survive, 'personally as well as for the government'. Ms Neville said she was conscious to ensure that any decisions were reflected in formal processes, albeit there was also an informal process. Ms Neville stressed that her approach had worked, allowing the government to get to a point of 'progress' where there was a new organisation and a chance to move forward for the community'.

IBAC heard evidence from Ms Neville that Mr Marshall would regularly call her two to four times a day, but she guessed that she had only spoken to him about the Canadian Fire Chief's candidacy for the FRV Commissioner role four or five times. In her evidence, Ms Neville agreed that there is a risk in such regular communication blurring the line between consulting and merely providing Mr Marshall with an opportunity to put his position, but that it was 'a judgment call I needed to make to get this relationship to get us to a certain point'.

IBAC finds that while Minister Neville might not have deliberately sought out Mr Marshall's advice about the appointment of the FRV Commissioner, her public statement did not accurately reflect the level of access and communication between Minister Neville and Mr Marshall. Her public statement was also contrary to her obligations under the Ministerial Code to act honestly, to provide a proper account of her exercise of public office and to take all reasonable steps to ensure that she did not knowingly mislead the public.[72]

IBAC also found that the level of access Mr Marshall had to Minister Neville, and the lack of transparency concerning those engagements, placed the Minister at risk of being improperly influenced. As previously stated, while IBAC did not find that Minister Neville appointed the new FRV Commissioner because of Mr Marshall's influence, IBAC did find that the Minister's stakeholder management of Mr Marshall created significant opportunities for him to do so by giving him privileged access to the Minister and her deliberations. This issue is discussed in further detail in section 4.1.1.

72 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clauses 2.2, 2.3, 2.4.

3.5.5 MFB Board member shares confidential information with the UFU

Based on the evidence set out below, IBAC established that an MFB Board member, Mr Greg Sword, shared confidential information with Mr Marshall in breach of his professional obligations.

Mr Sword joined the MFB Board in March 2018. PPO advisor A gave evidence that the government considered that Mr Sword, as a senior union figure, 'would be a good person who could go and get Peter's ear and pull him into line'. Mr Sword had previously held senior positions in the federal and Victorian Labor party, was a former National Secretary of the National Union of Workers and had been engaged by Labor previously to help broker fire services EBAs (see section 2.2.3). He is also a long-time friend of Mr Marshall's.

On 28 May 2019, Mr Sword met Mr Marshall for lunch in a restaurant in Melbourne. After a few minutes of pleasantries, the remainder of the meeting focused on fire services matters. IBAC captured Mr Sword disclosing a number of confidential board matters to Mr Marshall. These included:

- Mr Sword stating that the MFB Board was putting together the budget. He informed Mr Marshall that there was currently a significant deficit in costs due to overtime and additional costs and discussed with Mr Marshall whether those costs would be reimbursed by government.
- Mr Sword disclosed that – as Chair of the MFB Finance Committee – he had put in a budget item to employ an additional 50 firefighters to address the excessive overtime costs.
- Mr Sword suggesting to Mr Marshall which members of the MFB Board Mr Marshall could rely on during the transition to FRV.

The meeting concluded with Mr Sword thanking Mr Marshall for helping him 'with understanding directions'.

Mr Sword appeared before IBAC to give evidence on 24 June 2019, a month after the meeting described above. When asked in evidence about whether he had any private discussions with Mr Marshall about the board's activities or the operation of the MFB he replied:

> No ... and when we have caught up for a cup of coffee ... he doesn't tell me either about what he's doing.

Mr Sword gave evidence that he had informed the MFB Board that his friendship with Mr Marshall:

> wouldn't interfere with me doing my job properly and that I would not in any circumstances be talking to Peter about what the board was doing.

He told IBAC that he had shared with board members the fact of his relationship with Mr Marshall but had not made a formal declaration of a conflict of interest.

In November 2020, when Mr Marshall was asked in evidence whether he had met with Mr Sword to discuss MFB Board and operational issues, he responded:

> Absolutely not ... he's actually a big stickler for that one.

Mr Marshall noted:

> I do go out to dinner with him. Has he discussed Board matters? You don't do that.

Mr Marshall and Mr Sword's testimonies about the information they exchanged were inconsistent with the evidence before IBAC. Mr Sword's actions in disclosing confidential information to Mr Marshall were also contrary to his obligations under the *Code of Conduct for Directors of Victorian Public Entities*. Under this code, Mr Sword was expected to act with honesty and integrity. He was also required to 'use the information they gain in the course of their Board duties only for its intended purpose'.[73] Mr Sword's contradictory evidence to IBAC also conflicted with his obligation to be open and transparent.[74]

In October 2020, the Premier announced the appointments to the Strategic Advisory Committee for the FRV. Mr Sword was one of six appointees to the new FRV committee and the only member of the former MFB Board to transition to a committee role with FRV. Mr Sword served on the committee until October 2025. In addition, Mr Sword also served as an independent member of FRV's Audit, Risk and Compliance Committee from September 2020 until September 2025.

73 Victorian Public Sector Commission 2016, *Code of Conduct for Directors of Victorian Public Entities*, Victorian Government, clauses 3.11, 3.7.
74 ibid., clause 3.11.

4 Observations on conduct, systems, policies and controls

This report explores a range of conduct which, although not found to meet the statutory criteria to establish corrupt conduct within the IBAC Act, has the potential to enable, facilitate or result in corrupt conduct. In reporting on this conduct, IBAC seeks to illustrate how existing behaviours, and deficiencies in systems, policies and controls have the potential to facilitate corrupt conduct, and highlight areas where improvements can be made to minimise the risk of corrupt conduct occurring in the future.

This section contains IBAC's observations about deficiencies in behaviour, systems, policies and controls exposed in the course of investigating alleged corrupt conduct in Operation Richmond, or relevant to the events investigated.

This section also contains recommendations issued under section 159 of the IBAC Act, which are intended to address key risks IBAC observed during the investigation relating to the conduct of ministers, which increased the likelihood of and their vulnerability to corrupt conduct in the form of improper influence (see section 4.2).

4.1 Improper influence

A public officer may be improperly influenced to make a certain decision or take certain action by various means, including through pressure, favours or gifts, or by someone abusing their seniority or position. Where such influence adversely impacts the honest performance of a public officer's functions, or involves a significant breach of public trust or the misuse of information, improper influence may constitute corrupt conduct.

As democratically elected representatives, ministers have a duty to make themselves available to members of the community and engage with groups representing various interests. When making decisions and engaging with constituents, ministers must ensure that their interactions and decision making in relation to special interest groups does not conflict with their obligation to act with integrity and in the public interest.[75] It is also important that ministers demonstrate an ability to actively manage risks of improper influence by acting with transparency and by addressing inappropriate behaviours to help to build public confidence in the decision-making process and associated policy outcomes.

As the evidence set out in this report demonstrates, IBAC found that Mr Marshall was afforded privileged access to senior members of government from the beginning of the EBA negotiations in 2015 until the establishment of FRV in 2019. The frequency and opacity of many of these interactions increased the risk of decision makers and their staff being improperly influenced by Mr Marshall. The lack of transparency surrounding decision making in relation to the fire services also contributed to perceptions in the community that ministers were acting for partisan purposes, rather than in the public interest.

This section discusses the conduct identified in Operation Richmond which increased the risk of improper influence. Although IBAC did not establish all required elements to make findings of corrupt conduct under the IBAC Act in Operation Richmond, the type of conduct and behaviour described below has the potential to enable, facilitate or result in corrupt conduct. This section also explores the controls that can support public officers to resist improper influence and prevent corrupt conduct, including reforms to lobbying regulation.

4.1.1 Issues identified in Operation Richmond

Access to decision makers, including by special interest groups, allows constituents to exercise their democratic right to advocate for outcomes that are important to them. It also enables decision makers to hear a mix of perspectives that can help them to make informed and balanced decisions.

However, privileged and unchecked access can create substantial risk. Recent IBAC investigations have shown how special interest groups have a lot to gain or lose from the policy-making process. In the case of Operation Richmond, a union wanted to reach an agreement with the government that was favourable to its members. In Operation Daintree, IBAC identified another union advocating for the procurement of health training offered by their affiliated entity, while in Operation Sandon developers sought potentially lucrative planning approvals from local and state government decision makers. In such circumstances, well-resourced groups may exert significant effort and money to access decision makers (or their staff) and lobby them for favourable outcomes.

75 Victorian Government 2023, *Ministerial Code of Conduct*, clause 2.1.

If this privileged access to decision makers – that is, access that is not broadly available to others in the community – is not properly checked, it can distort the policy-making process and lead to 'policy capture':

> Policy capture is the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interests of a specific interest group or person.[76]

The impact of policy capture and improper influence can be significant. By diverting decision making away from the public interest, policy capture can impact the effectiveness of public services and threaten public health and safety.[77] Professor Joo-Cheong Tham has observed that improper influence can also be insidious and damaging to the democratic process. He notes that it:

> does not require explicit bargains or that a specific act results from the receipt of funds [but rather ...] implicit bargains of favourable treatment or a culture of delivering preferential treatment to moneyed interests.[78]

Importantly, even the mere appearance of capture or favouritism can foster the perception that politics are unfair, eroding government legitimacy.[79]

Policy capture is most likely when special interest groups have the incentives or resources to influence policy outcomes, and when the rules allow opportunities to do so.[80] The Organisation for Economic Co-operation and Development (OECD) warns that capture can occur through illegal channels such as bribery, but also through legal pathways, such as lobbying and the provision of financial support to political parties and election campaigns. It can also occur by manipulating the information provided to decision makers or establishing close ties with them.[81]

Several of these risk factors were present in Operation Richmond. While IBAC makes no statement as to whether the government's decisions on the fire services EBAs and FRV were in the public interest or not, IBAC's investigation did find that Mr Marshall sought to influence the government on these matters, and that the government's ultimate decision making broadly aligned with the UFU's. The risk that this decision making might have been improperly influenced by Mr Marshall was significant. The following sections explain key factors of the decision-making process that contributed to this risk and highlights the type of conduct which could enable, facilitate or result in corrupt conduct.

Sense of reciprocal obligation

All major political parties share ideological views with, or are aligned to, special interest groups. Maintaining close ties to these groups is not inherently improper, but these ties can give rise to strong expectations of favourable treatment that need to be carefully managed.

The governing party during Operation Richmond was the Victorian Labor Party. Victorian Labor is strongly aligned with the union movement and maintains ties to unions as a source of revenue, party membership and shared ideology. Their website states under the heading 'mutual support', 'The ALP aims to support trade unions in pursuit of their industrial goals and many unions support the ALP in pursuit of its political goals'.[82] Many Labor MPs and ministers have strong ties to the movement, including past employment in unions and long-standing personal relationships with union leaders.

As an affiliated union, the UFU maintained formal ties to Victorian Labor over the relevant period, providing financial support and voting on party matters. The UFU also provided support for the Party's 2014 election campaign and the Labor Party made pre-election commitments to the UFU.

76 OECD 2017, 'Preventing policy capture: Integrity in Public Decision Making', *OECD Public Governance Reviews*, p 9.
77 ibid., pp 9–10.
78 Senate Select Committee into the Political Influence of Donations 2018, *Political Influence of Donations*, Parliament of Australia, pp 21–22.
79 OECD 2017, 'Preventing policy capture: Integrity in Public Decision Making', *OECD Public Governance Reviews*, p 10.
80 Wood, D, Griffiths, K and Chivers, D 2018, 'Who's in the room? Access and influence in Australian politics', *Grattan Institute*, p 11.
81 OECD 2017, 'Preventing policy capture: Integrity in Public Decision Making', *OECD Public Governance Reviews*, p 9.
82 Victorian Labor 2021, 'Labor and Unions', web page, Victorian Branch of the ALP, Melbourne.

IBAC does not question these arrangements. It was legitimate for the UFU, as the recognised bargaining representative for firefighters, to advocate for its members and for government to engage with them in this capacity. However, the formal and informal ties between the UFU and the government, including their election support, created an expectation – and a potential sense of obligation – that the government would reciprocate and support positions favourable to the UFU.

In their evidence to IBAC, PPO advisor A recalled hearing a comment made by a fellow advisor which referenced this expectation:

> We owe a lot to the firefighters because they helped us get elected. Any time we needed to do a rally, Peter could get an auditorium full of firefighters.

As detailed in chapter 3, IBAC found that Mr Marshall sought to leverage the UFU's relationship with the government and prior support for the Labor Party to influence the government into supporting his preferred position on fire services matters. This is reflected in a text message exchange between Minister Jennings and Mr Marshall in June 2016, in which Minister Jennings explains the actions he has taken to bring the CFA in line with the government's position on the CFA EBA. In response, Mr Marshall acknowledges the political cost the government has incurred in defending the deal and says that he will be there for them for the next election.

The UFU's relationship with the Labor Party created both a potential and perceived risk that this relationship might improperly interfere with decision making about fire services EBAs. Mr Eccles said in evidence that there is a 'particular dynamic that goes to the relationship of organised labour with Labor governments', and that 'in the interests of best practice', when it comes to EBA negotiations it is best to 'sanitise the process as much as possible'. In their evidence to IBAC, the Treasurer said that 'the substance of negotiations needs to be managed at the departmental level', rather than by ministers, and noted that this was true for all government expenditure decisions regardless of the party in power. Mr Andrews provided similar commentary in his examination:

> ... it is an issue that needs to be managed ... You have to act appropriately. You have to behave appropriately. Just like I'm sure a Liberal government when they get representatives from the Business Council or from the Australian Industry Group or from the Chamber of Commerce or whoever it might be, some of whom for all we know are officeholders in the Liberal Party, you have to manage those issues too.

However, as detailed in chapter 3 and shown below, Operation Richmond established that on several occasions the government did not appropriately manage this risk.

Privileged access without transparency

Ms Neville and the Treasurer both told IBAC in evidence about the requirement in the Ministerial Code that they make themselves available to the community and ensure constituents are able to raise issues and make representations to ministers.[83] However, the Ministerial Code in place at the time also provided that irrespective of the context or stakeholder group involved, ministers should act in accordance with their overall obligations – for honest, efficient and effective government.[84] When special interest groups gain privileged access to decision makers it can allow them an unfair advantage in promoting their interests over others, distorting the policy-making process. This risk can be further exacerbated by a lack of transparency.

83 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clauses 3.3, 3.6.
84 ibid., clause 3.5.

The OECD state that a 'sound framework for transparency is crucial to safeguarding the public interest and promoting a level playing field for different interests, therefore avoiding capture by powerful interest groups.'[85] Transparency increases public officers' resistance to improper influence by opening their stakeholder interactions to greater scrutiny, thereby moderating their behaviour and disincentivising them from making partisan deals. It also publicly demonstrates that they have not done so. As noted by the Grattan Institute:

> Even if policy makers do meet with a wide variety of interests and appropriately balance their views, the perception that some interests might be distorting policy-making is still a problem for government. The perception ... undermines trust in government ...[86]

IBAC found that privileged and non-transparent access to decision makers occurred in Operation Richmond. As set out in this report, Mr Marshall had direct and indirect access to senior ministers, MPs and public servants, and many of his interactions with these public officers were not disclosed (see for example sections 3.2.3, 3.5.4 and 3.5.5).

The most striking example of privileged access exposed in Operation Richmond concerns the April 2016 undisclosed negotiations between Mr Marshall, Minister Jennings and Mr Bates on the CFA EBA (see section 3.2.3). IBAC found that key government stakeholders and decision makers, including the relevant minister, cabinet members, and senior public service executives, were neither involved in, nor provided essential information about these negotiations (see section 3.2.4). The lack of transparency around these events contributed to the suspicion that Mr Andrews had been blackmailed by Mr Marshall. IBAC found that this suspicion was shared by senior members of government, who initially speculated that Mr Marshall may have had something over the Premier to warrant the change in policy direction.

In his evidence, Mr Andrews agreed it was not an unreasonable conclusion to draw that ministerial involvement in the detail of negotiations with an affiliated union could give rise to a public perception that the dealings are not properly at arm's length and have allowed politics to intrude. He added that this perception exists regardless of whether the Minister was involved or not, and whether the union is affiliated or not.

Similarly, IBAC found that the non-transparent access that Mr Marshall had to Minister Neville (detailed in section 3.5.4) created a substantial risk that he might improperly influence her decision making about fire services matters. The 'informal processes' employed by the Minister provided Mr Marshall with privileged access as the engagements were regular, held in private and without official records being maintained. In such engagements there was no mechanism for Minister Neville to hear differing opinions or to receive the coverage typically provided by having third parties present – usually public servants or advisors. This also limited Minister Neville's ability to acquit her responsibility under the Ministerial Code to observe fairness in making official decisions by consulting as appropriate to the issue and taking account of the merits of matters before her.[87]

IBAC notes that Mr Marshall's style of engagement involved frequent and demanding contact, sometimes outside the boundaries of normal business hours. IBAC heard evidence and observed from mobile phone data lawfully obtained by IBAC that Mr Marshall sent text messages to members of government throughout the night and phoned them at all hours. For example, on 4 May 2016, Mr Marshall sent text messages to Minister Jennings at 1.15 am, 1.16 am and 1.20 am in which he expressed concern that the deal would not be honoured and repeatedly asked Minister Jennings when Mr Marshall could call him. At 5.25 am on the same day Mr Marshall sent a text message to Minister Jennings asking, 'You awake need to talk urgently if possible'. On 11 May 2016, Mr Marshall sent Minister Jennings a lengthy text message at 3.49 am covering various topics including his concerns about the lack of progress with the EBA, requesting a detailed update on a board meeting the previous day, and requesting that Minister Jennings call him in the morning.

85 OECD 2017, 'Preventing policy capture: Integrity in Public Decision Making', *OECD Public Governance Reviews*, p 55.
86 Wood, D, Griffiths, K and Chivers, D 2018, 'Who's in the room? Access and influence in Australian politics', *Grattan Institute*, p 13.
87 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clauses 2.2(ii), 3.5.

PPO advisor A gave evidence that the then-Premier received calls from Mr Marshall at 4 am. Similarly, Minister Garrett gave evidence that Mr Marshall's approach was 'very relentless and ringing at all hours ... And it didn't kind of matter whether it was a small issue or a big issue ... His approach was always the same'. When asked in his examination about Mr Marshall's access to senior members of government, the Premier said that he did not think that Mr Marshall's level of access was special or unique. The Premier said that it was common for ministers to have regular contact or close working relationships with union secretaries or other stakeholders from professional associations.

The Premier described Mr Marshall's way of communicating with government as 'a special approach' and 'in a style all of its own' but said that he would not call it special access.

Rather, the Premier expressed the view that:

> nobody invites eight calls a day from Peter Marshall. The fact that he makes them is more a commentary on him than any relationship he has with the recipient of those phone calls.

IBAC accepts the Premier's evidence that it is common for ministers to have regular contact or close working relationships with key stakeholders. IBAC accepts the Premier's evidence that many of Mr Marshall's communications, including those after hours, were unsolicited. IBAC also agrees that Mr Marshall's communication style primarily reflects on Mr Marshall. IBAC does not however accept that this is where the matter ends. The Premier's perspective omits a key factor: the government's response to Mr Marshall.

As this report details, Mr Marshall's various attempts to obtain updates and reassurance from the government did not go unanswered or ignored. To the contrary, senior government officials and ministers were proactively communicating with Mr Marshall, on high-alert to his growing impatience at the stagnated EBA negotiations, providing him with live updates that other stakeholders were not privy to, giving him ear-time at all times and seeking to placate him so he would not use his union power-base to the government's detriment. The complicit and jocular tone of some of Mr Marshall's communications with Minister Neville and Mr Bates are not solely a reflection of Mr Marshall's dogged pursuit of UFU interests but indicative of a government which has allowed a stakeholder to dictate the terms of engagement.

As stated above, the fact that the government engaged in undisclosed EBA negotiations with Mr Marshall to the exclusion of other key stakeholders and reached an undisclosed deal with him clearly conflicts with the Premier's suggestion that Mr Marshall did not have special access to the government. This was an extraordinary departure from policy and procedure. No other stakeholders enjoyed this privilege.

Based on the evidence outlined in this report, IBAC finds that Mr Marshall was allowed special access to government during the period investigated by Operation Richmond.

Irrespective of whether they are personally involved in such communications, leaders of government have a responsibility to appropriately manage stakeholders so they are not given special access or preferential treatment. Failure to do so can lead to distortion and capture of the policy-making process.

4.1.2 Prevention opportunities

Lobbying reform

In recent years, IBAC has made a number of substantial recommendations to the government to address the risk of improper influence and strengthen the regulation of lobbying activity. While the government has provided in-principle support for these recommendations, legislative reforms have yet to be introduced. Operation Richmond provides further clear evidence of the need for the government to take decisive action on the regulation of lobbying to address risks of improper influence and safeguard public interest decision making.

In October 2022, IBAC released a Donations and Lobbying Report which included a suite of recommendations to better capture and regulate lobbying activity in Victoria. This included recommendations to increase the transparency and accountability of lobbying activities, including by moving towards a broader activity-based definition of lobbying more in line with community perceptions, introducing stronger requirements to declare private interests, and improving disclosure and record-keeping rules. Relevantly, the report also recommended ensuring lobbyists cannot lobby elected officials whose election campaign they have indirectly or directly supported. This recommendation was designed to address issues with reciprocal expectations arising from campaign support.[88] The report also recommended reforms to the lobbying enforcement framework, including recommending that DPC undertake work to identify a preferred model for a new lobbying regulator.[89]

In April 2023, IBAC released its *Operation Daintree special report* which reiterated the importance of these recommendations and additionally recommended that employee and employer associations (including unions) should be included in any reforms related to the Donations and Lobbying report.[90]

The government has provided in-principle support for these recommendations and committed to implementing related reforms in this term of government.[91] In January 2025, the government released a consultation paper seeking public input on the direction of new lobbying reforms.[92] Since the closure of consultations in February 2025, however, the government has made no further public comment on the proposed reforms and provided no indication about when the changes can be expected.

One area where reform has progressed is in relation to the introduction of ministerial diary disclosure requirements, which were introduced as part of the updated Ministerial Code published on 1 December 2023.[93] The Code now requires ministers to publish summaries from their diaries on a quarterly basis, detailing scheduled meetings with a range of external stakeholders and lobbyists. IBAC considers this reform to be a positive step towards providing greater transparency and accountability in government, but notes that there are some gaps and limitations that may be leveraged to facilitate improper access and influence. One concern is that ministerial staff, including chiefs of staff, are not subject to diary disclosure requirements. Another is that only scheduled meetings need to be disclosed.

88 Independent Broad-based Anti-Corruption Commission 2022, *Special report on corruption risks associated with donations and lobbying*, IBAC, Melbourne, Recommendation 3.
89 ibid., Recommendation 4.
90 Independent Broad-based Anti-Corruption Commission 2023, *Operation Daintree special report*, IBAC, Melbourne, Recommendation 1.
91 Premier of Victoria 2022, 'Action and Funding to Deliver Integrity Reforms,' press release, 12 October 2022.
92 Engage Victoria 2025, 'Lobbying Reform' webpage, Melbourne.
93 Victorian Government 2023, *Ministerial Code of Conduct*.

As shown in IBAC's Operations Richmond, Daintree and Sandon, influence over elected officials is rarely sought solely through regular scheduled meetings – more often individuals will attempt to seek access through more informal channels, via phone calls, at social events or in more casual meetings where there is no record of what was discussed. These investigations also showed that ministerial staff are often a primary point of contact for those seeking to exert improper influence over decision making. As the practice of publishing diaries matures, IBAC therefore considers it would be prudent for the government to carry out a review of the disclosure arrangements, with a view to expanding the scope of diary disclosures to capture a greater portion of influencing interactions.

While some progress has been made towards enhancing the transparency of decision making through the new diary disclosure regime, IBAC considers that there is further work that needs to be done to ensure Victoria's regulatory framework for lobbying is robust and adequately addresses the risks of improper influence highlighted in Operation Richmond. IBAC urges the government to prioritise the reforms outlined in the Donations and Lobbying report to ensure Victoria's arrangements are effective, modern and reflect best practice. In particular, IBAC urges the government to adopt a common-sense approach to defining the scope of lobbying activity, to ensure influential bodies such as unions and other employee and employer groups are captured.

4.2 Ministerial conduct

Integrity in politics is essential to maintaining trust in our democratic system of government and guarding against the dishonest performance of public functions, the misuse of power, and other behaviours that enable, facilitate or result in corrupt conduct. Ministers play a central role in shaping the ethical culture of government and setting the standard for how decisions are made and programs are administered. As the Ministerial Code states, ministers have wide discretionary powers, access to significant public funds, and extensive executive and policy authority at their disposal.[94] It is critical that as ministers carry out their duties and use their powers, that they strive to meet the highest standards of conduct, actively call out inappropriate behaviours, and act as stewards of good governance and integrity. Fostering a robust integrity culture among senior leaders is perhaps the strongest defence a government can mount against improper influence, perceptions of corruption and corrupt conduct.

Elections are an oft-cited feature of our democratic system that can serve as structural protection against the abuse of power by enabling the public to hold elected officials to account for failing to act ethically or for engaging in corrupt conduct. But as the Grattan Institute observes, 'voting is ultimately a blunt check on bad policy and bad behaviour'.[95] Citizens face a host of competing issues that demand their attention at the ballot box, integrity being but one. In addition, elections can only help curb behaviour when the public has full knowledge of key events and decisions and is able to make an informed decision about whether a government has acted properly and in accordance with the public interest in the given circumstances. When decisions are made away from public view, voters' ability to make an informed decision about the merits and ethics of a government's activities is compromised.

94 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 1.2.
95 Wood, D, Griffiths, K and Chivers, D 2018, 'Who's in the room? Access and influence in Australian politics', *Grattan Institute*, p 7.

Voting therefore cannot be the only guardrail in place to protect integrity failings. Robust codes of conduct, education and access to integrity resources are all important preventative measures that can be deployed to lift standards of conduct and reduce the risks of corruption.

This section highlights key issues identified in Operation Richmond with respect to ministerial conduct. It exposes poor adherence to policies, procedures and convention, and identifies failures to address inappropriate behaviour. While, as previously noted, IBAC ultimately did not establish all required elements to make findings of corrupt conduct under the IBAC Act in Operation Richmond, acting contrary to policies and procedures which are designed to promote public accountability and support public officers to resist improper influence, and failing to address inappropriate behaviour, can create an environment which enables, facilitates or results in corrupt conduct.

This section also sets out IBAC's recommendations for reforms to prevent corrupt conduct by helping to embed strong standards of conduct across the government, including through the formalisation of conduct standards and introduction of resources to support ministers to carry out their duties to the highest standards.

4.2.1 Issues identified in Operation Richmond

Poor adherence to policies, procedures and convention

Operation Richmond identified instances of ministers ignoring or behaving contrary to government policy, procedures and conventions.

For example, contrary to the Ministerial Code and PSIRP, the Premier authorised Minister Jennings to undertake EBA negotiations with the UFU, which occurred to the exclusion of the responsible minister, department and agencies (see section 3.2.2). Nor were the negotiations or the nature of the 'UFU proposal' disclosed thereafter to them or to ERSC members (see section 3.2.5). In line with the Premier's intention for the EBA to be promptly considered by ERSC, public sector processes were then fast-tracked, not followed or otherwise managed in ways that limited opportunities for rigorous analysis of the proposed EBA (see section 3.2.4).

Similarly, Minister Jennings' failure to disclose his communications with the presiding Fair Work Commissioner during the 2016 FWC conciliation proceedings was contrary to his obligations under the Ministerial Code, and obligations for good faith bargaining under the PSIRP (see section 3.3.2). IBAC's investigation also found that despite her obligation for disclosure under the Ministerial Code, Minister Neville did not provide a complete public account of her engagements with Mr Marshall during the appointment of the then-FRV Commissioner (see section 3.5.4).[96]

As detailed in the sections below, failure by ministers to abide by these public sector checks and balances presented several corruption risks.

Vulnerability to improper influence

Adherence to regulations – laws, policies and procedure – is a key safeguard in supporting public officers to balance stakeholder interests and resist improper influence and corruption.

For example, although IBAC heard that Mr Marshall wished it differently (see the evidence of PPO advisor A in section 2.2.3), through the initial parts of the CFA negotiations in 2015 the government acted broadly in accordance with the PSIRP and Wages Policy. This effectively constrained how ministers could act and how generous they could be during negotiations. If Mr Marshall demanded preferential treatment, ministers could defer to their obligation to act within the industrial relations framework. This 'regulatory coverage' was also available to ministers by reference to their need to keep government stakeholders in the loop, follow Cabinet processes and act honestly.

However, contrary to government policy and procedure, the Premier authorised Minister Jennings to take over the negotiations with Mr Marshall, with the knowledge of these events remaining hidden. In doing so, the government effectively lost its regulatory coverage, creating an expectation that the UFU would receive preferential treatment as the 'rules' previously in play did not now apply equally to them. Their actions were also compromising, granting Mr Marshall leverage and undermining the government's ability to resist his demands. This can be seen in Mr Marshall's continued efforts (see sections 3.3–3.4) to use his 'deal' to extract concessions from government under threat of further industrial action and disclosure of the negotiations.

96 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.3.

The close management of the fire services by the Premier's Special Minister of State, office and department during and after the negotiations – and the accompanying marginalisation of the CFA, MFB and EMV – further undermined the government's regulatory coverage. In sidelining these public bodies, the government sent the message that the usual processes did not apply, key stakeholders could effectively be ignored, and Mr Marshall could readily go to government to make his case.

Undermining public accountability

Public access to timely and accurate information about the activities of the executive branch of government is essential for accountability and informed democratic participation (see section 2.1.1).

The convention of ministerial responsibility supports this need by providing for Parliament to hold ministers to account for the discharge of their portfolio responsibilities. To this end, the *Ministerial Code of Conduct* requires ministers to 'provide a proper account of their exercise of public office, and of the activities of the agencies within their portfolios'.[97] With respect to the emergency services portfolio, Minister Garrett had been given responsibility for the CFA under General Order and was expected to be able to account for the organisation's activities and related issues to Parliament.[98]

In evidence to IBAC, Mr Jennings said:

> But the issue is, did I act in accordance with my duties as a minister? Yes, I did. Did it, in an ideal world, should it have been with the involvement and the agreement of the Minister, yes, it should have.

Mr Jennings referred IBAC to his job description and the wide remit given to him as set out in his ministerial charter letter from the Premier, which detailed the government's commitments and priorities he was responsible for delivering.

IBAC accepts that Minister Jennings considered that his intervention was within his broad remit and that he had been authorised to act by the Premier. However, the decision to authorise Minister Jennings to take over the negotiations without disclosing this more broadly meant that no one was accountable for those negotiations to Parliament. The Commonwealth Solicitor-General commented on this principle of accountability in their August 2022 opinion in respect of the then-Prime Minister's undisclosed assumption of the Department of Industry, Science, Energy and Resources portfolio. The opinion stated that while the appointment itself was valid, the fact that it was undisclosed made it inconsistent with the principle of responsible government because:

> ... it is impossible for the Parliament to hold Ministers to account for the administration of departments if it does not know which Ministers are responsible for which departments.[99]

The failure to disclose Minister Jennings' negotiations with the UFU to the responsible minister, the relevant agencies, Parliament and the public meant that no one was in a position to properly hold the government to account for the way in which the fire services EBAs were negotiated and finalised.

Evidence heard during Operation Richmond also highlights the potential risk that Cabinet meetings might be misused to hide the activities of the executive from public scrutiny and further reduce the accountability of ministers.

Cabinet confidentiality is a Westminster convention by which deliberations and decisions, and the associated documents and information, of Cabinet or a sub-committee of Cabinet are confidential (see section 1.2). While Cabinet confidentiality promotes open discussion within Cabinet meetings, it also carries the inherent risk that Cabinet members might seek to use this convention to deliberately obscure discussion about matters which are not strictly Cabinet business but that they do not wish to be publicly disclosed. This lack of transparency undermines public accountability.

97 Victorian Government 2012, *Code of Conduct for Ministers and Parliamentary Secretaries*, clause 2.3.
98 Premier of Victoria 2014, 'New Premier and His Cabinet', press release, 4 December 2014; General Order, 2024, [Vic], 14 December 2014.
99 Department of the Prime Minister and Cabinet 2022, *Solicitor-General Opinion — In the matter of the validity of the appointment of Mr Morrison to administer the Department of Industry, Science, Energy and Resources*, para 32, p 15.

As detailed in section 3.3.2, IBAC heard evidence that the government's deliberation on the CFA's application to transfer the FWC proceedings to the FWC President in May 2016 occurred in an unscheduled ERSC meeting. Though IBAC makes no comment as to whether what was discussed in this meeting was indeed legitimate Cabinet business, Ms Garrett's evidence to IBAC of the 'purported' ERSC meeting illustrates the risk that such meetings could be misused. Ms Garrett noted in her evidence that during the EBA process several sub-committee Cabinet meetings had arisen. The former Federal Coalition Government was criticised in 2022 for their similar use of sub-committees.

Failure to address inappropriate behaviour

The behaviour of government leaders, including the Premier and Ministers, sets the tone and standard for all public officers. They have a responsibility to uphold high standards of conduct, both by role-modelling appropriate behaviour and by responding proactively when confronted with inappropriate behaviour by others.

IBAC recognises that there is nothing unusual or wrong with stakeholders strongly advocating for their interests to government. Problems arise when stakeholder access to government goes unchecked and inappropriate behaviour by stakeholders is allowed. Inappropriate behaviour can itself become a driver of corruption, including where such behaviour impacts on power dynamics or involves the abuse of power or authority, or contributes to a culture of silence where unethical or potentially corrupt conduct is not questioned or challenged.

As detailed in section 4.1.1, Mr Marshall's communication style could, at times, be described as incessant. However, as set out in this report, it was not just the frequency with which Mr Marshall sought updates and reassurance from ministers and government officials that was problematic. Mr Marshall became increasingly irascible as his patience wore thin at the undisclosed deal failing to materialise. At times, this presented an occupational hazard to those on the receiving end of Mr Marshall's frustration.

In their evidence to IBAC, one witness stated that 'a large number of staffers ... were suffering some severe mental health issues for the way Peter treated them, talked to them, and they felt physically vulnerable'. The witness noted that a former colleague and senior staffer 'was very close to a nervous breakdown over the way Pete had treated [them] ...' and another individual '... ended up having to leave [their] role [be]cause of the way Peter treated [them]'. This same witness told IBAC: 'I've seen him leave his staff in tears to the point where they didn't feel it was safe to, at one stage, leave [that person's] office.'

The impact was not confined to staffers. When Minister Garrett was asked by IBAC about her experience of dealing with Mr Marshall, she replied, 'Mr Marshall is notoriously difficult to deal with and has been for many years. He has a very violent temper and is known for not coping very well if things don't go his way'. Minister Garrett further explained to IBAC why she found Mr Marshall difficult, describing him as 'very relentless ... very abusive, very threatening'. Minister Garrett also told IBAC that some staff were 'traumatised by dealing with Mr Marshall' and that following the 2014 election, the first person asked to take on the emergency services portfolio refused in part because they were already 'terrorised by dealing with Mr Marshall'.

Concerns about Mr Marshall's behaviour were reported in the media, including a news article from 5 August 2016 titled 'CFA Dispute, Union boss Peter Marshall denies axe threat towards Jane Garrett'. This article reported an allegation that Mr Marshall had threatened Minister Garrett, which resulted in Minister Garrett seeking to file a formal complaint. Mr Marshall denied the allegation at the time. In his evidence to IBAC, Mr Marshall again refuted this particular allegation and stated, more generally, he had never behaved in a threatening manner towards Minister Garrett. In his response to a draft of this report, Mr Marshall continued to deny the allegation.

As previously noted, IBAC considers that the Premier was aware of Mr Marshall's problematic behaviour. IBAC heard in evidence that in 2015 a memorandum was provided to the Premier in preparation for an upcoming meeting with Mr Marshall, which canvassed the government's position on a range of issues relating to the fire services. The memorandum, dated 4 August 2015, included the following comment about Mr Marshall's behaviour: 'Marshall has crossed the line in recent months as to what would be considered acceptable behaviour' and recommended that the Premier 'consider asking Marshall to be more respectful to all Ministers, members, staff and Departments and to treat them with the respect he would demand himself'. The memorandum was also referenced in the media at the time.

In their examination by IBAC, PPO advisor A was asked whether the Premier would have read the memo. PPO advisor A told IBAC that, 'The Premier always reads his memo … he'd tell you where you'd got a comma wrong or a full stop wrong in your memo'. When asked whether the Premier spoke to Mr Marshall about the memo, the PPO advisor recalled a meeting where the Premier said to Mr Marshall something to the effect of, 'Look, I need you to start working, you know, a bit better'. Commenting on the government's awareness of Mr Marshall's behaviour, Ms Garrett told IBAC that Mr Marshall's conduct was well known, including by the Premier, and that she felt 'very deeply let down' by the failure to address Mr Marshall's behaviour.

While IBAC recognises that Mr Marshall's engagement style presented a formidable challenge for the government, IBAC considers that it was the government's decision to enter into an undisclosed deal with Mr Marshall that gave him a unique degree of access to government staffers, leverage to make demands and created expectations of preferential treatment. It also meant the government (including the Premier) did not take visible or effective action to address Mr Marshall's inappropriate conduct. This failure exposed individuals to harm, set a poor cultural standard within the Victorian public sector and fostered public perceptions of favouritism among the broader community.

4.2.2 Prevention opportunities

Formalising the Ministerial Code

Values-based and appropriate standards

Clear and appropriate standards of ministerial conduct play an important role in guiding decision making and allow the public to better assess whether ministers are acting in an accountable manner. To promote consistency and public confidence, integrity standards for ministers should be based on a set of fundamental values that endure beyond each term of government. To support compliance, the obligations that flow from these core values should be comprehensive and tailored to the unique responsibilities and operating environment of the ministerial office.

The Victorian Government published an updated version of the Ministerial Code in December 2023.[100] The Code articulates three overarching values that ministers are expected to demonstrate a commitment to, namely: accountability, integrity and public interest. Specific obligations are outlined underneath each of these key values.

IBAC considers that the updated Code provides clearer and more effective direction and guidance to ministers on their obligations compared to the Code in place during the events of Operation Richmond. The reframing of the Ministerial Code according to the central values of accountability, integrity and public interest is a positive change that more clearly expresses what the 'right thing' for ministers to do is, and why. For instance, the value of 'integrity' is now more strongly tied to the need to earn and sustain public trust, and includes expanded requirements for openness, honesty and transparency. The Code now also references the Westminster system and explains how ministers are answerable to Parliament.

By providing greater context and guidance to ministers on their role and obligations, IBAC considers that the updated Ministerial Code will help ministers to better understand, interpret and comply with their obligations.

100 Victorian Government 2023, *Ministerial Code of Conduct*.

Enduring form and evolving obligations

In addition to considering the standards and values set out in a code of conduct, it is also important to consider its form. Conduct standards for ministers can take a range of shapes – they may be enshrined in legislation, issued under regulations or set informally. The form a code takes affects how it is perceived, updated and enforced.

The current Ministerial Code takes the form of a policy document, issued at the discretion of the Premier. As a policy document, the Ministerial Code does not have the authority of a code of conduct that is established in, or prescribed by, legislation. The absence of any legislative requirements pertaining to the code also means it may be revised, deleted or removed from public view at any time without any notice.

These problems are not merely hypothetical. In March 2015, it was discovered that the Ministerial Code had disappeared from public view and was no longer available on the Premier's website. The Ministerial Code was unavailable to the public for two years under two governments.[101] The fact that the standards of conduct for government ministers could disappear so easily and for a protracted length of time demonstrates a clear need for a formal code that is in a robust and enduring form, and always accessible to the public.

Comparative codes in Victoria, such as the MP and Public Sector codes of conduct both have a legislative basis.[102] The MP Code of Conduct is written into the *Members of Parliament (Standards) Act 1978* (Vic), while the Public Sector Code of Conduct is required to be published under the PA Act. In New South Wales, the Ministerial Code is required under section 9 of the *Independent Commission Against Corruption Act 1988* (NSW) and prescribed by regulations. The legislated basis of each of these codes strengthens their authority and provides a strong foundation for enforcement.

Introducing a legislative requirement that the Victorian Ministerial Code be published would align its status to the codes of conduct for other public officers in Victoria. It would also send a strong message to ministers and the community more broadly that the standards contained in the Code are important and should be respected.

Codes of conduct that are required by legislation, rather than written expressly into an Act, have the advantage of being easier to update as changes do not require legislative amendments to be drafted or voted on by Parliament. A limitation of this form of code, however, is that because they are easier to amend and change, their provisions are less likely to remain stable and endure into the future.

One way to strike a balance between ensuring that codes of conduct can be flexible, while maintaining a consistent set of standards, is to enshrine a set of core values in legislation and require that the code of conduct encompass these values. For example, the Queensland *Public Sector Ethics Act 1994* (Qld) specifies four ethics values for the public sector and requires that the codes of conduct for public service agencies, public sector entities and public officials must be consistent with these values. This mechanism ensures that all public sector codes in Queensland maintain a consistent focus on the four ethics values, helping to integrate these values deeply across the sector.

Imposing a similar legislated requirement that the Victorian Ministerial Code include a statement of values set out in legislation will ensure that successive Ministerial Codes retain the same core values, helping to embed these standards of conduct over time.

To ensure that codes of conduct remain relevant, it is important that they have review and amendment mechanisms to facilitate change as issues arise and public expectations evolve over time. Both the Victorian MP and Public Sector codes of conduct have legislated review mechanisms in place.[103] Introducing a legislated requirement that the Ministerial Code be periodically reviewed will ensure the code can evolve to address emerging issues or community expectations and reduce the likelihood of the code becoming irrelevant or falling out of step with community values.

Finally, consideration should also be given to developing more sophisticated, independent and robust enforcement arrangements for the Ministerial Code. Current arrangements are limited – enforcement is at the discretion of the Premier, sanctions are not clearly defined, and there are no transparency mechanisms in place to ensure investigations and findings are made public.

101 See Victoria, *Parliamentary Debates*, Legislative Council, 19 March 2015, 646.
102 *Members of Parliament (Standards) Act 1978* (Vic) pt 3, and *Public Administration Act 2004* (Vic) s 61.
103 *Parliamentary Committees Act 2003* (Vic) s 8(1)(b) and *Public Administration Act 2004* (Vic) s 61(7).

There are a range of measures the government could consider to strengthen enforcement of the Ministerial Code to build public trust and safeguard against corrupt conduct. Introducing a graduated suite of sanctions for breaches would bring Victoria's Ministerial Code in line with better practice arrangements in other Australian and international jurisdictions.[104] Consideration could also be given to what role the newly established Parliamentary Workplace Standards and Integrity Commission (PWSI Commission), or another independent party, could play in relation to receiving, triaging and investigating complaints relating to the Ministerial Code. Introducing more robust and independent enforcement arrangements would strengthen compliance and bring Victoria's arrangements in line with more robust arrangements in other jurisdictions.[105] Strengthening enforcement would also demonstrate the government's commitment to maintaining the highest standards of integrity and ethics.

IBAC considers that the formalisation of the Ministerial Code is an important step towards developing a robust integrity culture among minsters and parliamentary secretaries.

Recommendation 1

IBAC recommends that the Premier introduces legislation to establish a statement of values for ministers and require the publishing and periodic review of a Ministerial Code of Conduct to be based on the statement of values.

Transforming values into action

Comprehensive guidance on ethics, obligations and convention

In carrying out their duties, ministers are expected to act in accordance with high ethical standards, both by complying with laws and policies, and by following the conventions that underpin Victoria's political system. Conventions are established practices, methods and habits that guide behaviour. Conventions fill the gaps in Victoria's constitutional and legal framework, providing a logic and structure to guide the conduct of government.[106]

By their nature, conventions are often subjective, contextual and negotiated. This quality enables conventions to shift and evolve over time to reflect contemporary values, adjust to novel circumstances and meet new conditions of government.

The subjective and evolving quality of conventions can, however, mean that over time, their purpose can become indistinct and their application unclear. This lack of clarity can threaten the very existence of conventions, which depend on them being generally recognised and practised. Conventions that have lost their clarity also pose problems for accountability, as it becomes difficult to assess adherence to expected standards and practices, when those standards and practices are poorly defined or only defined after the fact.

On the subject of conventions, the New South Wales (NSW) Ministerial Handbook observes that:

> Conventions guide practice precisely because they are recognized and used to guide practice. Their existence depends upon a general recognition that they are useful and should be followed and upheld by both sides of politics (bipartisan acceptance). Hence, it is important, from time to time, to step back and attempt to describe what is the content of conventions.[107]

104 The ministerial codes of conduct in South Australia, Tasmania and the UK allow for a range of sanctions in addition to resignation, such as apologies, suspensions, remedial action and counselling. Similarly, the codes of conduct for Victorian public servants and MPs both provide for a graduated suite of sanctions.
105 For example, in NSW, substantial breaches of its Ministerial Code of Conduct can be investigated by the Independent Commission Against Corruption, whereas IBAC's powers are limited to investigating conduct that would constitute a relevant offence. Likewise, the UK, Ireland, Scotland and Northern Ireland all have provisions that allow for independent investigation of alleged breaches of their ministerial codes.
106 Menzies, J and Tiernan, A 2014, *Caretaker Conventions in Australasia: Minding the Shop for Government*, 2nd edn, ANU Press, Canberra, p 7.
107 Department of Premier and Cabinet (NSW) 2011, *Ministerial Handbook*, Annexure D.

Given the important role conventions play in determining and rationalising the actions of government, IBAC considers that new guidance should be developed that endeavours to clearly identify and explain the key conventions operating in Victoria. Existing guidance, largely contained in the Victorian Cabinet Handbook and Ministerial Code, is fragmented, brief and provides only a shallow expression of the purpose and rationale for core constitutional conventions.[108] These documents therefore provide limited assistance to ministers who need to understand and apply these conventions in practice. They also lack sufficient substance to be used as a basis for understanding and evaluating the actions of government, limiting opportunities for scrutiny and accountability.

To this end, IBAC recommends the government develop a publicly available Ministerial Handbook that identifies and explains the Westminster conventions operating in Victoria. This guidance should be explanatory, rather than prescriptive, with the aim of encouraging a deeper and more conscious engagement with the principles that sit beneath the operation of government, and in turn, a more considered approach to the application of conventions in political practice. The handbook should also be considered a living document, that can be updated over time to reflect changes in practice.

IBAC recommends the government model its approach off the NSW handbook, which contains a detailed summary of key cabinet conventions as well as guidance material compiled by Anne Twomey and Roger Wilkins.[109] NSW also has a separate Ministers' Office Handbook which helpfully sets out more administrative policies, procedures and guidance.[110]

In addition to containing guidance on convention, IBAC considers that the handbook could also bring together the various existing policies and guidelines that apply to ministers and their offices, so that it may act as a single, simple and user-friendly reference for ministers and their staff. For example, the handbook could contain documents including the Ministerial Code, guidance on ministerial diary disclosures, and policies in relation to lobbying, ministerial staff employment and entitlements. This approach has been adopted in Queensland which has a comprehensive Ministerial Handbook that sets out common policies, practices and procedures with respect to human resources, information management, accountability and ethics, and the management of entitlements and expenses.[111]

IBAC considers that bringing together existing policy and attempting to identify and describe the unwritten, and often unspoken, rules that guide political practice, will support ministers to carry out their duties and provide greater transparency over the operation of government. Ultimately, this will provide a sounder basis for public scrutiny and accountability.

Recommendation 2

IBAC recommends that the Premier publish a Ministerial Handbook that brings together existing integrity guidance and policies for ministers and their staff, with new guidance on the operation of the Westminster conventions in a Victorian context (with reference to the New South Wales Ministerial Handbook provisions).

108 See for example, Victorian Government 2023, *Cabinet Handbook*, p 10; Victorian Government 2023, *Ministerial Code of Conduct*, section 3.
109 Department of Premier and Cabinet (NSW) 2011, *Ministerial Handbook*, section 2 and Annexure D.
110 Department of Premier and Cabinet (NSW) 2025, *Ministers' Office Handbook*.
111 Department of Premier and Cabinet (Qld) 2021, *The Queensland Ministerial Handbook: Governing Queensland*, Brisbane.

Access to advice and training

Access to independent advice and effective training play an important role in translating written codes, policies and guidance into practical action.

Real-time, confidential and informed advice about integrity matters from an independent source can be a useful resource for ministers that can help them to 'do the right thing' and navigate difficult ethical terrain. While the Premier is ultimately responsible for ministerial conduct, there may be circumstances in which a minister is reluctant or unable to seek advice from the Premier or colleagues. An independent party is also able to offer advice that is free from political considerations. Access to independent ethical advice and guidance is therefore an important component of an effective integrity framework.

As part of the government's package of reforms to parliamentary oversight in 2024, the existing Parliamentary Integrity Adviser (PIA) was established in legislation as an independent officer of the Parliament. The PIA's legislated functions include providing confidential integrity advice on request to MPs, ministers and parliamentary secretaries in relation to the ethical obligations of their roles and the performance of their public duties. The PIA is also responsible for conducting education and training for MPs, ministers and parliamentary secretaries about integrity and ethical issues.[112]

IBAC considers the formalisation and expansion of the role of the PIA to be a positive reform that will broaden and strengthen the range of ethical advice and guidance available to MPs, ministers and parliamentary secretaries, and help ministers and parliamentary secretaries proactively address ethical dilemmas. As the current PIA, Professor Charles Sampford noted in his recent annual report, 'prior advice is better than subsequent investigation'.[113]

In addition to providing access to advice, effective prevention also relies on regular education and training, which help to generate awareness and understanding of key principles and where to go for advice and support.

Following the release of IBAC's *Operation Daintree special report*, the government amended the Ministerial Code to require that ministers complete mandatory inductions and regular refresher training on their obligations, as recommended in the report.[114] IBAC understands that new ministers now receive induction training from DPC after they take office. In addition, all ministers also receive annual refresher training on their ministerial obligations from DPC. The training sessions cover a broad range of topics and may be tailored to engage with contemporary issues.

IBAC considers that there is scope to further develop the training program to address the integrity and corruption risks highlighted by Operation Richmond. In particular, IBAC considers that there is an opportunity to provide updated guidance and case studies for ministers in relation to:

- navigating relationships with interest groups and lobbyists[115]
- Westminster principles and conventions.

Incorporating these topics into the existing ministerial training program will help embed an awareness and understanding of the obligations, risks and potential issues that ministers may need to navigate as part of their role in engaging with stakeholders and serving as members of Cabinet.

Recommendation 3

IBAC recommends that the Secretary of the Department of Premier and Cabinet update training materials for ministers to include new guidance on:

- navigating relationships with interest groups and lobbyists
- Westminster principles and conventions.

112 *Parliamentary Workplace Standards and Integrity Act 2024* (Vic) s 87.
113 Parliament of Victoria 2025, *Parliamentary Integrity Adviser Annual Report 2024–2025*, Parliamentary Integrity Adviser, Melbourne, p 3.
114 Premier of Victoria, 'Strengthening Victoria's Public Sector Integrity', press release, 31 October 2023; Victorian Government, *Ministerial Code of Conduct 2023*, clause 3.1.5.
115 IBAC considers that in developing guidance and case studies, the focus should be on navigating relationships with stakeholders, special interest groups and 'lobbyists' in the broader, activity-based sense of this term as outlined in IBAC's *Special report on corruption risks associated with donations and lobbying* (Donations and Lobbying Report). See section 4.1.2 for further discussion of the reforms proposed in the Donations and Lobbying Report.

Ethical leadership in the workplace

As leaders in the workplace, the Premier and ministers have a duty to set high ethical standards within their offices and maintain a safe and respectful environment for their staff. In their role as the formal employer of ministerial staff, the Premier (or their delegate) has a duty to protect employee health and safety, including by managing risks to employees' psychological health.[116] While ministers do not employ ministerial staff, they do have obligations to take reasonable care for the health and safety of themselves and others in the workplace, including by promoting a safe and respectful workplace.[117]

In July 2022, the government introduced a suite of new workplace policies designed to improve safety for those working in ministerial offices, including policies relating to workplace bullying and occupational violence prevention.[118] This is a good first step towards defining expectations of safe and appropriate conduct in ministerial offices. Policies alone, however, cannot transform the safety and culture of a workplace. This is particularly true of the unique, high pressure and political environment of ministerial offices, where staff may not feel comfortable following complaint and issue resolution procedures or have low trust in reporting mechanisms.[119]

Ultimately, building an ethical workplace culture requires leadership. Workplace culture is often colloquially defined as 'the way we do things around here'.[120] Leaders directly influence workplace culture by conveying expectations of acceptable conduct. These expectations may be conveyed explicitly in codes of conduct and policies, but are usually made meaningful through patterns of behaviour, sanctions and rewards. When leaders allow or reward inappropriate or unsafe behaviour, they send a message about the standards of conduct they accept and uphold. In a government context, senior leaders, including ministers and the Premier, have an enhanced responsibility to demonstrate integrity and address poor behaviour as their conduct sets the tone and standard for all public officers and stakeholders engaging with government.

By setting and enforcing positive behavioural expectations, leaders can help create a safe, robust and ethical organisational culture which sends a powerful message to stakeholders about the standards of appropriate engagement. In this way, workplace standards and culture play an important role in embedding integrity within government and preventing corrupt conduct.

116 The Premier is empowered to employ ministerial staff under section 98 of the *Public Administration Act 2004* (Vic). In recent times, this employment power has been delegated to the Premier's Chief of Staff, who has acted as the employer of ministerial staff. On 1 December 2025, the government introduced the *Occupational Health and Safety (Psychological Health) Regulations 2025* which place new obligations on employers to control health and safety risks associated with psychosocial hazards in the workplace. Under the new regulations, employers must provide and maintain a working environment for their employees that is safe and without risks to health (including psychological health) as far as reasonably practicable. The regulations place a positive expectation on employers to implement proactive controls such as making changes to the work environment.

117 Victorian Government 2023, *Ministerial Code of Conduct*, clause 4.8.4.

118 Premier of Victoria, 'Ministerial Staff Code of Conduct and Workplace Policies', webpage.

119 Goward, P 2021, *Review of policies and procedures for Ministerial offices – bullying, harassment, and sexual misconduct*, NSW Department of Premier and Cabinet, pp 9–10; Jenkins, K 2021, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Australian Human Rights Commission, pp 15–16, 18.

120 Institute of Internal Auditors et al. 2017, *Managing Culture: A good practice guide*, Institute of Internal Auditors, p 9.

4.3 Public servant impartiality and independence

An independent and impartial public service provides an important safeguard against corrupt conduct. The provision of balanced and objective advice by public servants supports transparency and integrity in decision making and lessens the likelihood of public sector decisions or actions being improperly influenced. When checks and balances are absent, this can create opportunities for improper influence and breaches of public trust.

Operation Richmond identified instances of senior public servants displaying undue responsiveness – where policy decisions and activities are directed excessively towards supporting political aims –[121] in conflict with their integrity obligations. IBAC found that pressure was also placed on public servants to provide facilitative advice to ministers, rather than their independent opinion. This prevented the public service from fulfilling its responsibility to provide balanced and informed information to ministers. In light of similar findings in other recent integrity investigations, there is a need for concerted action to address the drivers of undue responsiveness and the barriers inhibiting the provision of frank, impartial and timely advice.

This section discusses the conduct of public servants identified in Operation Richmond that resulted in the public service failing to provide balanced and informed information to ministers. Although IBAC did not establish that the conduct in Operation Richmond met all required elements to make findings of corrupt conduct, the type of conduct described below could enable, facilitate or result in corrupt conduct.

This section also explores recent recommendations and reforms aimed at supporting public servants to act in an independent and impartial manner, lessening the likelihood of policy decisions and activities being manipulated to enable corrupt conduct.

4.3.1 Issues identified in Operation Richmond

Poor integrity leadership and undue responsiveness

An impartial public service is a defining feature of the Westminster system of government. It supports effective public administration by providing for elected officials to receive balanced and independent advice about policy and administrative matters. This function helps to orient decision making towards the needs of the community while tempering the potential for political or private interests to improperly interfere.

While public servants are subject to the direction of their respective ministers, they are also required to adhere to the Values and the Public Sector Code of Conduct. These overarching obligations maintain the integrity and effectiveness of the public service by requiring public servants to act impartially and to provide frank, impartial and timely advice.[122]

Mr Eccles' and Mr Bates' involvement in the undisclosed negotiations for the 2016 CFA EBA and subsequent actions to finalise and provide advice on the 'UFU proposal', without disclosing the original negotiations to key stakeholders and decision makers (see section 3.2), provides a clear example of public servants not acting as impartial advisors and implementers of government policy.

IBAC recognises the contractual obligations of senior public servants. For example, in the case of Mr Eccles, his employer was the Premier. Mr Eccles' employment contract placed upon him obligations to 'carry out any and all duties as directed' by the Premier, to 'faithfully serve' the Premier and 'at all times' use his 'best endeavours to promote the interest' of the Premier. However, his employment contract also required Mr Eccles to comply 'in all respects' with the Public Sector Code of Conduct and all relevant rules and regulations while undertaking the duties of his role. If Mr Eccles significantly failed to fulfil any of those contractual duties or obligations, the Premier could terminate his employment.

121 For a further discussion of this issue, refer to Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*, VO, Melbourne, p 14.
122 *Public Administration Act 2004* (Vic) s 7.

By not disclosing the existence of, and their involvement in, the undisclosed negotiations, Mr Bates and Mr Eccles denied key figures in government, including ministers and other executives, access to crucial information they needed to make informed decisions about their portfolios and carry out their public duties in relation to the EBAs. As detailed in section 3.2.6, this highlights the tensions that can arise under the employment arrangements for senior executives between their obligations to be responsive to ministers and their other contractual obligations to comply with the Public Sector Code of Conduct, the roles and responsibilities prescribed in the PSIRP, and DPC's objectives.

Further, despite being directly involved in the undisclosed negotiations for the 'UFU proposal', Mr Bates led the development of 'advice' to government on the EBA in the week after the negotiations. While public servants who are closely involved in policy matters are frequently involved in the drafting of related advice to government given their relevant knowledge and expertise, it is expected that they will provide objective and impartial advice on those matters. Mr Bates did not, however, produce a frank and impartial analysis of the EBA. Acting on the understanding that it was not his role to revisit or question the terms of the deal, he produced a succinct summary that did not analyse the appropriateness of the EBA (see section 3.2.4).

In his evidence to IBAC, Mr Eccles conceded that DPC was responsible for providing fearless, independent advice to government about the appropriateness of the terms of the EBA and agreed that the circumstances surrounding the undisclosed negotiations did not justify bypassing fundamental steps of the industrial relations framework.

Mr Bates accepted in his evidence that he had acted as a sort of trouble-shooter for the government on fire services matters. While helping to solve contentious issues is within the remit of a public servant's role, public servants must act in a professional and impartial manner. As detailed in section 3.3.2, Mr Bates' stakeholder management of Mr Marshall at times lacked professionalism and an expected degree of impartiality. Mr Bates shared sensitive information with Mr Marshall on two occasions and sent several text messages to Mr Marshall that were professionally inappropriate.

IBAC acknowledges that public servants serve the ministry and that Mr Bates and Mr Eccles had been instructed to assist with the undisclosed negotiations. Both executives, however, could have raised concerns about the intended approach and flagged the risks associated with running a negotiations process that excluded the input of the fire services and sidelined the responsible minister. In his evidence to IBAC, Mr Eccles acknowledged that in giving effect to the instruction for undisclosed negotiations they were 'bypassing the normal process'. When asked if he might have lost sight of the processes 'in the heat of [that] period', Mr Eccles reflected that, 'no moment should be so heated that you are not in a position to reference your activity and your advice to documented process'.

IBAC's investigation also highlighted numerous instances of public servants providing frank, impartial and timely advice to government and demonstrating resolve to do so. To this end though, IBAC also identified instances where pressure was placed on public servants to ensure that their advice would align more closely with the government's aims. This can be seen in the efforts made to ensure that the Treasurer and DTF facilitated agreement to the 2016 CFA EBA, rather than spear it, as well as the pressure placed on the Emergency Management Commissioner to retract a letter of objection to the EBA and to replace it with a letter stating that their concerns had been addressed (see section 3.2.4).

These examples demonstrate the difficulties that public servants face as they try to balance being responsive to the needs of the government with their concurrent responsibility to be apolitical. These duties can often be in conflict, a tension that needs to be carefully navigated so that the boundaries between the public service and the political executive are not blurred.

IBAC's findings reflect similar observations made in Operation Daintree, a prior investigation into a politicised procurement process at the then Department of Health and Human Services (DHHS).[123] In its 2023 *Operation Daintree special report*, IBAC noted that executives at DHHS were overly pliable in delivering what they understood the Minister wanted, and that they bypassed internal procurement safeguards to do so.[124]

123 Operation Daintree was an IBAC investigation that highlighted compromised procurement processes and improper influence for a $1.2 million contract awarded to a union-affiliated training group by DHHS. Independent Broad-based Anti-corruption Commission 2023, *Operation Daintree special report*, IBAC, Melbourne.
124 ibid., pp 7, 114–121.

Similar concerns were noted by the VO in its 2023 report into the alleged politicisation of the public sector.[125] While the VO did not substantiate the allegation that the VPS had been stacked with ALP operatives, it did identify similar forms of politicisation and problematic governance that were present in Operation Richmond. This included the marginalisation of independent voices, the bypassing of traditional bureaucratic structures, a concentration of decision making outside of specialist departments, and a culture of over-responsiveness towards ministerial preferences.[126]

As noted by the VO, the issue of undue public service responsiveness is not unique to Victoria. Rather, it reflects a growing trend observed across Australian governments.[127] In a 2021 Grattan Institute report, Professor John Daley noted concerns raised in the Thodey Review, that governments now sought out 'fellow travellers' for senior executives, and identified 'an increasing culture of [public servants] not merely implementing the policy of the government of the day, but serving its political interests.'[128] Similar behaviour was identified by the Robodebt Royal Commission concerning executives at the Commonwealth Department of Social Services.[129] Likewise, Professor Peter Coaldrake in his 2022 review of culture and accountability in the Queensland public sector noted:

> There is a view, repeatedly confirmed, that public service advice is too often shaped to suit what are assumed to be the preconceptions of the people receiving it, that the price for frank and fearless advice can be too high, sometimes devastatingly so, and the rewards too low.[130]

As detailed above, there has been considerable discussion among academics, integrity bodies and public policy commentators as to the main drivers of this shift. Most agree that there are structural issues at play that require solutions that go beyond the provision of guidance and education materials. The VO noted career insecurity as one factor in its investigation, detailing how executive employment arrangements within the VPS, such as fixed-term contracts and short 'at-will' termination clauses, act as barriers to executives sharing policy advice with ministers.[131] Similar concerns have been raised at the federal level regarding shifts in the appointment and dismissal of department secretaries.[132]

Commentators have also detailed how in an increasingly fast-paced and polarised media environment, the demands on the public service for responsive and politically tailored advice have increased in turn, with departments often drawn into assisting ministerial offices with issues management to limit political exposure.[133] Concurrently, the public service has been squeezed by the growing influence and size of ministerial offices and the outsourcing of policy advice and administration to the private sector.[134] In the face of these converging structural pressures, it's been observed that many public servants can be reluctant to offer advice that is not politically palatable, leading to overt pliability and a form of self-censorship.[135]

125 Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*, VO, Melbourne.
126 ibid., pp 4, 13.
127 ibid., p 4.
128 Daley, J 2021, 'Gridlock: removing barriers to policy reform', *Grattan Institute*, p 51.
129 *Royal Commission into the Robodebt Scheme* (Final Report, July 2023) vol 1, 643.
130 Coaldrake, P 2022, *'Let the sunshine in' – Review of culture and accountability in the Queensland public sector,* Queensland Government, p 9.
131 Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022* – Part 2, VO, Melbourne, p 68.
132 For example, see: Daley, J 2021, 'Gridlock: removing barriers to policy reform', *Grattan Institute*, p 51; Thodey, D et al. 2019, *Our Public Service, Our Future – Independent Review of the Australian Public Service*, Department of Prime Minister and Cabinet, Canberra, p 135; Grattan, M 2023, 'Speaker's Lecture 2023', speech, Canberra, 30 October 2023, pp 10–13.
133 Grattan, M 2023, 'Speaker's Lecture 2023', speech, Canberra, 30 October 2023, pp 10–14.
134 Coaldrake, P 2022, *'Let the sunshine in' – Review of culture and accountability in the Queensland public sector,* Queensland Government, p 89; Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*, VO, Melbourne, p 212.
135 Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*, VO, Melbourne, pp 243–244.

4.3.2 Prevention opportunities

IBAC and other integrity agencies have made several recommendations in recent years to strengthen the impartiality of the public service. While some reforms have been introduced in Victoria to address the issues canvassed in these reports, key risks relating to executive appointment and employment arrangements remain unaddressed. Operation Richmond provides further evidence of the need to ensure staff appropriately balance the public sector values of impartiality and responsiveness in carrying out their duties. IBAC considers that reforms must focus primarily on staff at the executive level. This is where interactions with ministerial offices are most common and the risk of undue responsiveness most pronounced.

This work is not the sole responsibility of public service leaders. Ministers ultimately set the tone for integrity in government and create the authorising environment in which public servants work. Lifting the standard of ministerial conduct is thus central to lifting standards across the public service more broadly. This requires ministers and departments to develop mutually respectful relationships that acknowledge each party's expertise and distinct role in the Westminster system.

Conversations about the independence and impartiality of the public service in Australian jurisdictions have been happening for some time. In 2019, the Australian Government commissioned the Thodey Review into the Australian Public Service (APS). The report argued:

> While many senior officers provide frank and honest advice to ministers, a perception that appointment and termination to a senior position can be arbitrary has a chilling effect, and public servants may become timid. The impact could mean the APS leadership favours being 'agreeable' rather than engaging in debate and challenge, and so compromise the provision of frank and fearless advice. As a result, APS culture can shift to one of hesitation, failing to challenge assumptions of ministers where warranted.[136]

This view was reiterated in the more recent Royal Commission report into the Robodebt scheme, which also highlighted a need to address the risks of improper influence and over responsiveness by public service executives. The report found that a failure to provide evidence-based, robust advice was a factor contributing to the creation and maintenance of the Robodebt scheme. The Commission heard that APS leaders had become excessively responsive to government, undermining impartiality and the provision of frank and fearless advice.[137]

Similar observations have been made recently in the Victorian context. In 2023, the VO released its 2023 report into the alleged politicisation of the public sector which identified a range of threats to the objectivity, professionalism and integrity of the public service and argued that 'creeping politicisation is a reality in Victoria, and requires urgent attention'.[138] The report identified rushed and shoddy recruitment practices, the overuse of direct appointments, career insecurity, and the marginalisation of public officials as particular threats to the integrity and impartiality of the public service.[139] The report noted that 'nothing will change without a recognition at the highest levels of government that change is necessary'.

In the report, the VO recommended several structural reforms to executive employment arrangements to address the risks of politicisation, including establishing an independent Head responsible for overseeing the employment of department secretaries and other agency leaders, and overhauling the employment framework by reconsidering 'at will' termination clauses for executives. In its formal response to the report, the government rejected the recommendation to establish an independent public service Head, but committed to reviewing processes for the selection and appointment of Secretaries and other agency heads. The government also stated it would review the standard employment contract and 'at-will' termination provisions. The government has not published an update on the progress of these reviews since the government tabled its formal response to the report in June 2024. IBAC encourages the government to continue progressing its reviews into executive selection and appointment practices and provide a public update upon finalisation.

136 Thodey, D et al. 2019, *Our Public Service, Our Future – Independent Review of the Australian Public Service,* Department of Prime Minister and Cabinet, Canberra, pp 292–293.
137 *Royal Commission into the Robodebt Scheme* (Final Report, July 2023) vol 1, 643.
138 Victorian Ombudsman 2023, *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*, VO, Melbourne, pp 5, 242.
139 ibid., p 242.

In recent years, the government has progressed some more modest initiatives that seek to clarify the role of the public sector, including introducing new training and guidance on public sector impartiality.[140] These initiatives sought to address recommendations made in IBAC's *Operation Daintree special report*, which recommended that the VPSC and the Victorian Secretaries' Board review and strengthen their programs to address the challenges of improper political interference in the VPS.[141]

More recently, in 2025, the VPSC published the *Model protocol for VPS engagement with ministerial offices*, which is a practical guide to assist departments with implementing VPSC advice relating to informing and advising ministers.[142] The model protocol sets out how VPS officers should communicate with ministers and their offices, who within each department is authorised to communicate, and the processes for providing advice to ministerial offices. IBAC commends this work for offering clarity on what constitutes appropriate engagement with ministerial offices and for providing practical guidelines that departments can tailor to their own operational context.

While clearer guidance is a welcome development, IBAC considers that deeper cultural and structural change is needed to avoid a repeat of the over-responsive conduct observed in Operation Richmond. IBAC considers that reforms must focus primarily on the role of ministers and senior executives, who are ultimately responsible for shaping the relationship between the government and the public service, and who play a significant role in setting the tone for integrity in government.

4.4 Politicisation of public entity board appointment processes

IBAC found that between 2015 and 2019, the government intervened significantly into fire services matters to finalise EBAs for the CFA and MFB and to establish FRV. Specifically, IBAC identified that the appointment processes for the CFA and MFB Boards were politicised, with the government seeking to appoint directors who were amenable to resolving the disputes and following directions to approve the EBAs. These processes lacked transparency and were not always run through a competitive, merit-based process.

The appointment process fanned perceptions within and outside of government that these entities were being used for political purposes. The events also highlight the potential for ministerial discretion in the board appointment process to be misused for political gain.

Opaque and politicised appointment processes can negatively impact the honest performance of board appointees' functions and breach public trust, and consequently enable, facilitate or result in corrupt conduct. This section details this issue in greater detail and includes suggestions to better protect the independence and integrity of public entities in Victoria and reduce the risk of corrupt conduct.

4.4.1 Issues identified in Operation Richmond

Operation Richmond identified that the government manipulated the appointment processes for the CFA and MFB Boards to ensure that board members who were appointed would be more amenable to following directions to approve the respective EBAs.

140 Victorian Government 2023, *Operation Daintree special report – Government Response – October 2023*, Vic Gov, Melbourne, pp 8–9.
141 Independent Broad-based Anti-Corruption Commission 2023, *Operation Daintree special report*, IBAC, Melbourne, recommendation 15.
142 Victorian Public Sector Commission 2025, *Model protocol for engaging with a ministerial office*, 14 February 2025.

As set out in section 3.3.3, IBAC found that the government anticipated that the CFA Board of June 2016 would refuse to endorse the EBA. Minister Jennings, Mr Eccles, Mr Bates and the PPO planned for that outcome and saw it as an opportunity to appoint a board that would support the EBA. The PPO had direct input into the sourcing of applicants, and appointees were made aware that it was expected that they would approve the EBA. Later, a similar non-competitive, non-transparent selection process was undertaken with new appointees to the MFB Board (see section 3.4.3). Again, the PPO put forward applicants and those appointed were given an understanding that they would be expected to endorse the terms of the proposed EBA under consideration at that time.

It is normal for governments to look favourably upon candidates who possess the requisite skillset for the role and whose views best align to their policy objectives. Critical in that context, however, is that applicants are able to satisfy themselves that those objectives serve their entity's best interests and that their ability to do so is not limited by the presumption of alignment.

An impartial assessment of a proposed EBA by the public entity entrusted with the management of the relevant workforce is an important step in the public sector IR process. Such scrutiny is intended to ensure that an EBA ultimately settled upon serves the best interests of the entity.[143] However, the government's actions to pre-empt board considerations by manipulating the board selection process undermined the likelihood that adequate scrutiny would be brought to bear.

IBAC's investigation also demonstrated how appointment processes might be manipulated so that appointees could be appointed on political criteria over merit. Grattan Institute research highlights how the potential politicisation of public appointments could result in Victoria missing 'out on some of the best people to run key institutions', while also eroding the leadership of important institutions and wasting taxpayers' money.[144] Such behaviour can also set a damaging precedent, creating the impression that political considerations and party loyalty can rightly trump the public interest. Of concern to IBAC is how this kind of behaviour can foster cultures of patronage within governments, while eroding integrity behaviours which would typically inhibit corruption.[145] As stated by the Chair of the UK Committee on Standards in Public Life in a 2020 speech:

> It is not unusual or wrong for governments to want to appoint people who share their views; and political activity is not a bar but cannot be a reason for appointment. Merit must be at the heart of the system, not cronyism or patronage.[146]

The 'stacking' of the CFA and MFB Boards was also widely reported in the media at the time, with many in the community likely perceiving the appointment process to have been politicised. The Grattan Institute has commented on this issue:

> Even if the person appointed is fully capable of the job, the perception of politicisation can affect the morale and culture of an organisation and undermine public faith in the institution involved.[147]

143 Industrial Relations Victoria 2016, *Public Sector Industrial Relations Policies 2015*, Department of Economic Development, Jobs, Transport and Resources, Vic Gov, Melbourne, p 6.
144 Wood D, Griffiths K and Stobart A 2022, 'New politics: A better process for public appointments', *Grattan Institute*, p 3.
145 ibid., p 23.
146 Evans, J 2020, 'Hugh Kay Lecture: Are we in a post-Nolan age?', speech, London, 11 November 2020.
147 Griffiths, K and Emslie, O 2022, 'Giving jobs to political allies smells like cronyism', *Grattan Institute*.

The politicisation of board appointment processes is not uncommon, whatever party is in government. In their evidence to IBAC, PPO advisor A said that it was not unusual for governments to appoint like-minded people to boards, claiming that a previous Coalition government had stacked water boards with directors aligned to delivering on its water irrigation policy in Victoria. Likewise, the media at the time reported that the Andrews government dismissed all these water board members soon after taking power. Improving the transparency and integrity of the public appointment process is evidently necessary to reduce risks of corrupt conduct, regardless of which party is in power.

In 2023, water boards were again back in the media. In a news article titled, 'Plum water board jobs put focus back on Labor appointments', it was reported that Labor affiliates had been appointed to board positions on the state's water corporations and catchment authorities. The article also noted that Labor affiliates, including former ministers, had been appointed to public boards since their retirement in 2022.

IBAC does not suggest that these recent appointments were improper. Rather, the Commission seeks to highlight the tendency for the public to focus on any perceived partiality in the appointment process and the implied damage that this may do to the public's trust in government and our public institutions.

4.4.2 Prevention opportunities

To maintain public trust in the independence, quality and integrity of Victoria's public boards, it is essential that appointments are conducted in a manner that is free, and seen to be free, from improper political influence. This enables the public to have confidence that board members can act impartially and in the best interests of the entity to which they serve, particularly when circumstances may be politically fraught.

Maintaining an appropriate degree of independence and accountability in the operation of public sector boards is central to enabling public entities to discharge their functions effectively and maintain public trust. There are hundreds of public sector boards in Victoria, each with different roles, functions and governing arrangements. Public entities traditionally operate at 'arm's length' from ministers in their day-to-day operations, but remain accountable to the responsible minister for their functions.

Ministerial control over public sector boards varies, with some boards operating with a high level of independence from their minister, while others operate with a greater degree of ministerial oversight. Ultimately, ministers bear final responsibility for the actions and decisions of boards that fall within their portfolio and can direct boards to take a particular course of action by issuing ministerial directions. Navigating the tension of operating independently, while remaining accountable to the Minister for an entity's functions is an important aspect of public board governance.

Noting the important role that board members play in ensuring the independence and accountability of public boards, it is important that appointments to public sector boards are made via rigorous, merit-based and transparent processes. This helps to maintain the public's trust in the ability of a board to act impartially and effectively manage the relationship between the board, the relevant department and portfolio minister. Effective governance arrangements are a key line of defence against corruption and improper influence in public entities.

The *Appointment and Remuneration Guidelines*, which govern appointments to government boards, have been updated four times since the board appointments took place in Operation Richmond, most recently in November 2025, although the general principles and processes underpinning the process remain largely the same as in 2016. The guidelines outline best practice for board appointments. They advise that a selection panel should scrutinise each application and that selection processes should be merit based, fair, open and attract a diversity of applicants.[148] In general, IBAC considers that the guidelines set out appropriate principles and processes that ought to ensure that recruitments are conducted in an ethical and independent manner.

The guidelines do, however, provide significant discretion for ministers and their departments to act outside the recommended process. While some flexibility is required for guidelines that are designed to cover appointments to hundreds of public boards with various compositions and functions, the wide and largely undefined exemptions increase the risk of appointments being carried out in a politicised and non-transparent manner. For example, while the guidelines state that 'selection processes should be open, merit-based, fair, and endeavour to attract a diversity of applicants'[149], they contemplate a situation where the full process is not followed:

> In rare circumstances open and competitive recruitment may not be possible or appropriate, for example where there is a very small pool of candidates that meet the specific statutory requirements. If an open and competitive process has not been undertaken, the reasons for this must be explained by the responsible minister in the relevant Cabinet submission or in writing to the Premier, before the appointment is finalised.[150]

Beyond noting that opting out of an open and competitive process should be 'rare' and may be appropriate in circumstances where there are a limited number of candidates, the guidelines provide no further clarity on other circumstances where an open and competitive process may not be adopted. IBAC considers that a more prescriptive level of guidance may be appropriate in this section of the guidelines, noting the risks of politicisation are elevated under direct recruitment processes.[151]

In addition, while the requirement to justify non-competitive appointments via a Cabinet submission supports transparency *within* government, it does not address the issue that arose within Operation Richmond, that the process is not transparent *external* to government and that the public might therefore perceive these appointments as tainted by political considerations. As a 2012 ANU review of Australian public sector governance noted, 'what is important is the actual perception of the reason for appointment, which is likely to be more negative than otherwise when processes are not transparent'.[152]

In isolation, opaque appointments to public boards can attract public comment and criticism. When direct and non-transparent appointments become the norm, the effect can be truly corrosive. This reality is strikingly captured in Lynelle Briggs' recent review of public sector board appointments. In the report's concluding comments, Briggs observed that:

> Public trust has been undermined to such an extent by the level of direct appointments in recent years that people fear that they are being landed with overpaid political hacks who cannot do these important jobs properly and that some of these bodies may not be operating in the public interest.[153]

148 Victorian Government 2025, *Appointment and Remuneration Guidelines*, Vic Gov, p 13.
149 ibid.
150 ibid.
151 Briggs, L 2023, *'No Favourites: Report of the Review into Public Sector Board Appointment Processes'*, Australian Public Sector Commission, p 23.
152 Edwards, M, Halligan, J, Horrigan, B and Nicoll, G 2012, Public Sector Governance in Australia, ANU E Press, 'Appointments and Boards', p 3.
153 Briggs, L 2023, *'No Favourites: Report of the Review into Public Sector Board Appointment Processes'*, Australian Public Sector Commission, p 92.

It is crucial that the government acts to avoid such a scenario playing out within Victoria.

There are some modest steps the government can take now to strengthen the process for public board appointments. Further revisions can be made to the *Appointment and Remuneration Guidelines* to further define and limit the circumstances in which ministers and their departments may deviate from key steps, particularly in relation to carrying out an open and competitive recruitment process. Consideration could also be given to providing more transparency in relation to board appointment processes, including by publishing or tabling in parliament a report outlining details of the appointment, including relevant qualifications and experience. These measures would provide greater public confidence in the robustness of the board appointment process and help to avoid the erosion of public trust warned of in the Briggs report.

Ultimately, however, the integrity of public sector appointments relies primarily on ministers acting in good faith and adopting a principled approach to board appointments. It is incumbent on our elected leaders to take their obligations in relation to board appointments seriously, and to strive to implement open, competitive and comprehensive recruitment processes. Board appointments that are particularly sensitive or urgent provide particular opportunities for governments to demonstrate their commitment to integrity by carrying out these appointments in an open, transparent and ethical manner, when the stakes are at their highest.

Appendix A: Natural justice requirements and responses

The IBAC Act[154] provides a process for people and entities who have been involved in an investigation to have the opportunity to view relevant parts of a draft of the report. Where IBAC intends to make an adverse finding against a public body or to make a comment or opinion that is adverse to any person, that public body or person must be given a reasonable opportunity to respond to those comments or opinions. In Operation Richmond, IBAC did this by providing witnesses with extracts from a draft version of this report.

IBAC must fairly set out each element of a response to an adverse finding, comment or opinion it receives in its report.

If IBAC intends to include a comment or an opinion about any person that is not adverse to the person, it must still provide that person with the relevant material in relation to which it intends to name the person. IBAC received several responses to a draft version of this report (from adversely and non-adversely mentioned witnesses). Some witnesses did not respond. Material changes have been made to the body of this report as a result of the responses IBAC did receive. Elements of responses not incorporated in the body of the report, or not fully incorporated, are reflected in this appendix. In some exceptional instances, IBAC has chosen to rebut a person's response within this appendix; however, overall, the report itself speaks entirely to IBAC's response. Elements of responses which IBAC considered extraneous to this report and its evidentiary basis are not reflected in this report.

Responses are set out in alphabetical order by group.

IBAC acknowledges that due to Ms Garrett's passing, she was not in a position to respond and unable to refute or defend any of the allegations, comments or findings in the report that could be considered adverse against them. IBAC has considered all available evidence and information, including information obtained through the submissions of others and from evidence provided by Ms Garrett during her examination by IBAC, to ensure all statements regarding Ms Garrett are reasonable, balanced and accurate.

Why IBAC has named some persons and not others in this report

IBAC must not identify a person in a special report who is not the subject of an adverse comment or opinion unless:

- it is satisfied that it is necessary or desirable to do so in the public interest;
- it is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
- it states in the report that the person is not the subject of any adverse comment or opinion.

Matters raised across multiple submissions

Procedural fairness

In their responses to the draft report, some witnesses (including Mr Andrews, Mr Bates, Mr Eccles, Mr Jennings, Mr Marshall and the UFU) submitted that they had been denied procedural fairness by IBAC making findings in the draft report without having questioned the witness about the subject of those findings during examinations.

IBAC's examinations are held in the course of an investigation. IBAC will commonly obtain further information or evidence after a witness's examination. As such, there is no obligation to put every adverse matter to that witness during their examination. IBAC's relevant procedural fairness obligation is set out in s 162(3) of the IBAC Act. As the High Court noted in *AB v IBAC* [2024] HCA 10 at 28, this 'obligation is only engaged when IBAC forms the intention to include the adverse comment or opinion in its special report'. Any such intention may not exist at the time of the examination. IBAC provided a reasonable opportunity (in accordance with section 162(3) of the IBAC Act) for subjects of adverse comments to respond to the report.

154 At s 162.

Lawful employment directions

In their responses to the draft report, some witnesses (including DPC, Mr Bates and Mr Eccles) asserted they could not be in breach of, or acting contrary to, the Public Sector Code of Conduct, the Values, policies or procedures if they were following lawful directions from their employer.

DPC submitted that their staff are legally obliged to comply with lawful and reasonable directions from their employer in accordance with their contractual employment obligations. DPC also noted that code of conduct obligations are 'standards of required behaviour rather than detailed policies and procedures' and that acting in accordance with a lawful and reasonable direction should not be considered inconsistent with the Public Sector Code of Conduct.

Mr Eccles and Mr Bates both maintained they acted in accordance with lawful directions. Mr Eccles submitted that he was directed to assist with the undisclosed negotiations and he was contractually obliged to comply with this direction and failing to adhere to being 'secret bound' would have resulted in contravention of his contract. Mr Bates similarly noted that a failure to follow lawful directions to participate in the negotiations and to keep those negotiations confidential during the initial period 'would have very likely constituted misconduct under the PA Act'.

IBAC notes codes of conduct issued by the Victorian Public Sector Commission under section 61 of the PA Act are binding. Compliance with these codes is not abrogated by employer directions. Contractual obligations for senior public servants equally require compliance with lawful directions and codes of conduct, rules and regulations. Therefore, there is an obligation to satisfy both requirements, that is, to:

1) comply with lawful and reasonable directions, and
2) comply with codes of conduct, the Values, policies and procedures.

Where directions are inconsistent with codes of conduct, either they do not constitute a lawful direction, or a reasonable excuse for not complying with the direction would apply.

People named in the report and responses to the draft report

The Hon Daniel Andrews MP

Ministerial Code of Conduct

Mr Andrews submitted that IBAC cannot engage in a partial analysis of the Ministerial Code if it does not determine whether the ultimate CFA EBA reached was or was not in the public interest. Mr Andrews asserts that as the Ministerial Code (cl 2.1 and cl 2.2(II)) is concerned with matters of public interest, IBAC cannot determine 'whether or not one process engaged in by Minister Jennings (albeit in an authorising environment established by Mr Andrews) amounts to a breach of the Code'.

Ministerial responsibility and Cabinet collective responsibility

Mr Andrews' submission addressed the principle of Ministerial responsibility and highlighted that this principle includes the collective responsibility of Cabinet to Parliament (and the public) for the whole conduct of administration. The submission noted that 'Ministers may be members of either House of a bicameral chamber and liable to the scrutiny of that chamber in respect of the conduct of the executive branch of government'.[155]

The submission also asserted that IBAC needed to take into account: that Mr Andrews was at all times a member of the Legislative Assembly; that, as Premier, he could be (and in fact was) asked questions without notice about the actions of the government during Question Time; and that Mr Andrews was at all times accountable to the Parliament both for his actions as Premier and for the actions of all of his Ministers.

155 On this point, Mr Andrews' response cited *Egan v Willis* (1998) 195 CLR 424, 453 [45] (Gaudron, Gummow and Hayne JJ).

Concealment of the undisclosed negotiations

In his response, Mr Andrews stated that he never accepted that he made a positive decision to conceal from Minister Garrett and the CFA that Minister Jennings, Mr Bates and Mr Eccles had negotiated directly with representatives of the UFU confidentially, or that they had reached any agreement as a result of those negotiations.

IBAC notes that in contrast to his evidence regarding his state of mind in relation to the public interest in resolving the industrial dispute, Mr Andrews' evidence about concealing the negotiations from Minister Garrett was highly uncertain. Mr Andrews accepted that Minister Jennings was in the group of people who were involved in the process and Minister Garrett was not, but Mr Andrews could not recall whether he had made a positive decision to conceal the relevant information from Minister Garrett and the agency. Mr Andrews testified that he did not know that to say that he had decided that it needed to be concealed from her and from the agency, necessarily conveyed his knowledge at that time.

Given the uncertainty of his evidence on this point, it was open to IBAC to draw reasonable inferences from the other evidence available to it to reach the conclusions that it did.

Mr Andrews' response maintained, 'to the extent that Minister Jennings (or others) determined actively to exclude Minister Garrett from negotiations with Mr Marshall, that is not capable of constituting a breach of Ministerial responsibility on the part of Mr Andrews'.

Procedural fairness

Mr Andrews' submission included comments in relation to procedural fairness. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions*.

Mr Tony Bates PSM

Undisclosed negotiations

In his response to the draft report, Mr Bates submitted that he was not personally authorised to, and did not in fact, conclude any agreement between the government and the UFU as part of the April 2016 negotiations.

Mr Bates disputed that he had worked to 'facilitate the Premier and Minister Jennings' political strategy to resolve the EBA dispute outside of established processes', or that he failed to act with 'integrity, impartiality and courage'.

Mr Bates considered that IBAC's use of the term 'undisclosed negotiations' was incorrect, noting that between 17 April and 10 May 2016, he briefed relevant stakeholders about the April 2016 negotiations. This included staff from the CFA, DTF, MFB, DJR, EMV and IRV. Mr Bates also stated that it was his understanding that DJR staff would in turn brief Minister Garrett. Mr Bates maintained that a level of confidentiality was 'not uncommon' in the final stages of sensitive EBA negotiations.

As set out in sections 3.2.4 and 3.2.5, IBAC found that the deal reached through the 'undisclosed negotiations' was presented to stakeholders as a 'UFU proposal' and the proposal's provenance (including details of Mr Jennings' and Mr Bates' negotiations with the UFU) was not disclosed to relevant ministers and agencies.

Conduct in relation to the Cabinet submission

In relation to the submission drafted by Mr Bates for the 19 April 2016 ERSC meeting, Mr Bates stated that it was not a submission to the whole of Cabinet, nor a submission directed to any final government decision about the EBA. He did not agree with the evidence of Mr Andrews and Mr Jennings that the ERSC meeting was 'critical' or a 'profound step', rather he considered it was 'another intermediate step in the process'.

Mr Bates asserted that Cabinet submissions would not ordinarily involve an 'evaluation' of the proposed terms of an EBA or an analysis of its 'appropriateness'. He reiterated that all Cabinet submissions must be concise in accordance with the Cabinet handbook.

Mr Bates also submitted that it would be unsafe for IBAC to make adverse comments or findings relating to the ERSC submission for the following reasons:

- the submission was subject to Cabinet confidentiality and he was obliged to preserve such confidentiality during IBAC's investigation
- he was not provided with a copy of the ERSC submission
- cabinet confidentiality is not abrogated by the IBAC Act
- on the basis IBAC did not have access to the ERSC submission, there is no proper evidentiary basis to make adverse findings on the balance of probabilities having regard to the principles in *Briginshaw* v *Briginshaw*.

IBAC accepts the application of the Briginshaw principle to the publication of special reports (see section 1.1). As noted earlier in the report, IBAC has only included reference to material subject to Cabinet confidentiality to the extent that the Executive Government has advised IBAC that a claim of public interest immunity over the information will not be made.

Information sharing and communications with Mr Marshall

In relation to the findings of sharing sensitive information with Mr Marshall (see section 3.3.2), Mr Bates stated that:

- he did not disclose the details of the cabinet reshuffle
- he indicated to Mr Marshall that there was no change in the Emergency Services portfolio, but did so less than half an hour before the public announcement
- he conveyed only the procedural steps that were being taken by the CFA Board, rather than any matters of substance.

In regard to IBAC's findings that some of his communications with Mr Marshall were inappropriate for a senior public servant (see section 3.3.2), Mr Bates accepted that, 'in principle, it is preferable to use temperate and respectful language' when managing stakeholders. Mr Bates also submitted that his communication style with Mr Marshall was appropriate and consistent with that routinely adopted by government officials to build rapport and effectively manage a particular stakeholder.

Direction to MFB regarding legal representation

Finally, in relation to IBAC's findings concerning the direction issued to MFB to cease using a particular lawyer (see section 3.4.5), Mr Bates submitted that, in addition to concerns regarding the quality of the law firm's advice, he also requested the change in MFB's legal representation at the Fair Work Commission on the basis that the partner's ongoing involvement would impact efforts to resolve the matters in dispute with the UFU. Ultimately, Mr Bates did not accept that his request constituted an 'improper interference in the direction of the MFB Board'.

Procedural fairness and lawful employment directions

Mr Bates' submission included comments in relation to procedural fairness and lawful employment directions. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions.*

Mr Chris Eccles AO

Mr Eccles' submission included comments in relation to procedural fairness and lawful employment directions. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions.*

The Hon Gavin Jennings MLC

Ministerial Charter and the role of the Premier

In his response to the draft report, Mr Jennings noted that he accepted the Premier's request to progress the CFA EBA as his Ministerial Charter included resolving cross-portfolio issues at the direction of the Premier.

Mr Jennings noted that the draft report 'overstated the position of a portfolio minister' and as a result 'understated the role of the Premier'. Mr Jennings noted that, in the context of the CFA EBA, the Premier had the authority to request his involvement in resolving the dispute and that his role should be kept confidential. Mr Jennings rejected any assertion that his actions in acquitting the Premier's request could be equated with acting dishonestly.

Mr Jennings submitted that it is the Premier's prerogative to determine whether a minister remains in their portfolio and a minister's responsibility to 'meet their statutory responsibilities' and maintain cabinet solidarity. Mr Jennings submitted that the Premier, having lost confidence in Minister Garrett's ability to progress the CFA EBA, 'sought a circuit breaker' (see section 3.2.2). Although Minister Garrett was not responsible for the CFA EBA negotiations in April 2016 (see section 3.2.3), Mr Jennings submitted that she 'was still able to put her position to the [ERSC] and Cabinet' and subsequently determine if she would support Cabinet's decision.

IBAC agrees that if a minister has lost the confidence of the Premier, the Premier can decide to remove that minister's portfolio. However, by doing so de-facto, without formally appointing another minister, the principle of ministerial responsibility is obscured.

Undisclosed negotiations

In relation to the undisclosed negotiations, Mr Jennings noted that the 'starting point' for the negotiations was the agreed position of the CFA and UFU as presented to the FWC in late 2015. Mr Jennings' assessment was that with 'some minor modifications' the costs of the draft CFA EBA would be 'within the financial envelope that had previously been put to the CFA' and it could subsequently lead to ERSC and Cabinet approval.

Mr Jennings asserted that the conclusions of the draft report were undermined by IBAC not including a 'disciplined assessment of the costs to the CFA', instead relying on comments 'made in the heat of negotiations'.

Mr Jennings also rejected the 'finding' that Mr Marshall was able to exert extraordinary influence over the CFA EBA negotiations. Mr Jennings submitted that his position was formed through his existing knowledge of the dispute, experience as a member of ERSC and advice from Mr Bates. Given this, Mr Jennings considered that, subject to further discussions, Mr Marshall's position was capable of being accepted by Cabinet.

Mr Jennings accepted that, on principle, his involvement in the negotiations with Mr Marshall and the UFU were 'not desirable'. Mr Jennings stated that by the time he had become involved in the negotiations, the matter could not be resolved through the PSIRP processes, as the dispute had become so intractable and the relationship between the UFU and Minister Garrett was dysfunctional.

Cabinet consideration of the 'UFU proposal'

Mr Jennings stated that following the undisclosed negotiations with the UFU in April 2016, he anticipated that all relevant ministers, including Minister Garrett, would fully participate in ERSC and Cabinet deliberation of the 'UFU proposal'. Mr Jennings also noted that he did not 'present the case or argue' for the UFU proposal when it was considered by ERSC or Cabinet.

Mr Jennings did not accept that there was a risk of improper influence or policy capture as the concerns of Minister Garrett and her Cabinet colleagues would be resolved through the ERSC and Cabinet process.

Procedural fairness

Mr Jennings' submission included comments in relation to procedural fairness. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions.*

Mr Peter Marshall and the UFU

In his response to the draft report, Mr Marshall submitted that throughout the relevant period, he was acting within the confines of the law to strongly advocate for the interests of his members (not his own) and that he never received any personal benefit. He stated that he did not have any awareness or responsibility for any actions by public officers or ministers that were contrary to policy or codes of conduct.

Improper influence and UFU access to Labor government and responsible ministers

In response to a draft of this report, Mr Marshall regarded his level of engagement with government to be a legitimate pursuit of his members' interests. Mr Marshall rejected that he was granted exceptional access to responsible ministers, noting that, as the Secretary of a Labor affiliated union, his level of access to ministers was not unusual. Mr Marshall and the UFU submitted that they have less access to Labor ministers than other unions.

Mr Marshall claimed that the standard by which IBAC assessed and concluded that Mr Marshall's influence was at risk of being improper was not identified or explained. Mr Marshall referred to 'improper influence' not being defined in the IBAC Act and considered it 'inherently evaluative'. He further stated that the investigation did not disclose actual improper influence, only a risk, and that no attempt was made to explain what legal or factual threshold was applied in identifying that risk, or to articulate a rational connection between the existence of such a risk and IBAC's statutory functions.

IBAC rejects that no attempt was made to explain the legal or factual threshold that was applied in identifying the risk of improper influence. IBAC provides an explanation of improper influence at Section 4 of the special report at page 75, and provides further explanation of Mr Marshall's improper influence at pages 76–79.

Undisclosed negotiations

In relation to the undisclosed negotiations described in the report, which took place in a rented meeting space and hotel meeting room (see section 3.2.3), Mr Marshall submitted that it was not unusual for the government to resolve EBAs and for bargaining parties to choose a neutral location for negotiations.

In response to the contents of his phone call with a ministerial advisor on 22 March 2019, in which Mr Marshall stated the CFA EBA was negotiated with Minister Jennings in a back room and endorsed by the Premier and Cabinet (see section 3.2.3), Mr Marshall submitted that this was not evidence of 'undisclosed negotiations' but instead evidence that the CFA EBA was negotiated with Minister Jennings, endorsed by the Premier and that it went through Cabinet 'as per usual process'. Mr Marshall submitted that evidence provided to IBAC by PPO advisor A (see section 2.2.3) about Mr Marshall's expectations regarding how the EBA negotiations would proceed was the advisor's speculative opinion about Mr Marshall and should not be included in the report.

In relation to his meeting with the Premier on 13 April 2016 (see section 3.2.4), Mr Marshall submitted that 'at all times, the UFU position was the UFU position' rather than a 'government position or anyone else's'. Mr Marshall submitted that the document referred to in the report as a 'UFU proposal' was drafted by legally trained UFU staff and provided by the UFU to the government.

Mr Marshall stated that UFU records indicate that the UFU was sending revised EBAs to Mr Bates on 19 April 2016. Mr Marshall submitted that this was evidence that ERSC were not considering a final negotiated document. IBAC notes that the ERSC meeting took place on 19 April 2016 (see section 3.2.5).

Mr Marshall submitted that there was no 'undisclosed deal'. Mr Marshall maintained, as he did during his examination by IBAC, that there were pre-election commitments made by the Labor party to the UFU.

Mr Marshall and the UFU stated that they should not be faulted for seeking to hold the government to account to election commitments that the government had made.

In relation to comments in the report referring to Mr Marshall threatening industrial action to ensure the undisclosed deal was honoured, Mr Marshall rejected the term 'threat', submitting that the taking of industrial action is a right under the FW Act.

Fair Work Commission hearings

In response to a draft of this report, Mr Marshall referred to evidence given to IBAC by the CFA CEO who heard 'one way screaming and yelling' from Mr Marshall at a without prejudice conference at the FWC. Mr Marshall submitted that by including this information in the report, IBAC was publishing information that has no probative value in respect of a finding of corrupt conduct and would undermine the policy of these conferences being held on a confidential without prejudice basis, and that IBAC's conduct is contrary to the underlying policy of s592(3) of the FW Act.

IBAC does not accept Mr Marshall's response on this point. IBAC's report does not reveal what was discussed in those confidential FWC conferences. IBAC's comments merely refer to Mr Marshall's reaction and rely upon evidence provided to IBAC during its private examinations. IBAC considers s592(3) of the FW Act has no relevance to IBAC's functions.

Fair Work Commissioner's Final Recommendations

Mr Marshall submitted that IBAC had mischaracterised the Final Recommendations of the Fair Work Commissioner, which stated that the UFU's proposal had 'not changed in any significant particular' since November 2015 (see section 3.3.2). Mr Marshall submitted that these comments did not substantiate IBAC's finding that the government made concessions during the undisclosed negotiations, but rather reflected that the UFU's log of claims and the key issues of concern to the UFU and its members remained consistent throughout the bargaining process. Mr Marshall submitted that, consistent with good faith bargaining obligations, the UFU's bargaining position will always give genuine and proper consideration to other proposals, however, the UFU's position will often remain consistent through bargaining.

Mr Marshall highlighted comments in the Final Recommendation that noted that the agreement only applied to paid professional firefighters, and changes were required to underline this point. Mr Marshall also highlighted comments in the Final Recommendation that the proposed agreement (including the changes to clause 83.5 concerning the 'seven on the fireground' requirement):

- did not apply to volunteer firefighters and did not alter their important role in fighting bushfires and maintaining community safety in remote and regional areas
- maintained the discretion of incident controllers in managing public resources in the interests of public safety.

Particulars of the CFA and MFB EBAs

Mr Marshall submitted that the UFU log of claims for the CFA EBA and for the MFB EBA (see section 2.2.3) were not extraordinary and were in line with similar organisations. He further submitted that IBAC is not qualified to pass judgment on industrial relations matters or operational matters involving fire response. Mr Marshall stated that IBAC's assessment of the functionality of the EBA clauses is irrelevant to IBAC functions, and these matters/clauses are regulated by Federal law.

In reference to the draft report's discussion about the relationship between the CFA and MFB EBAs (see section 3.4.5), Mr Marshall submitted that it was not unsurprising that the government supported the intention for the EBAs to mirror one another, as inter-agency interoperability among the fire services was government policy. Mr Marshall stated that there were a series of UFU, CFA and MFB working parties moving towards harmonising the fire services agencies.

Mr Marshall submitted that the 'consult and agree' clauses in the CFA and MFB EBAs were an important safeguard for employees. Mr Marshall stated that it was the role of the UFU, in representing its members, to advocate for the continued inclusion of the clauses, and that the UFU's advocacy for the continued inclusion of the consult and agree requirements was not evidence of an 'undisclosed deal'. Mr Marshall further submitted that there is no evidence of any link between corruption risks and 'consult and agree' clauses.

Mr Marshall referred to the below excerpt from a FWC decision relating to a refusal to terminate the 2010 MFB/UFU Operational Staff Agreements. Mr Marshall claimed that those agreements contained substantially the same consultation and dispute resolution clauses as the EBAs in this report:

> [313] My findings in relation to the likely effect of termination on those covered, are that there will be a significantly greater negative effect on the employees and the union than the positive effect on the MFB. I have made this finding for two reasons. Firstly because disputes that have a genuine connection with occupational health and safety will no longer be required to be the subject of consultation and a requirement to reach agreement and will not be able to progressed through the dispute resolution procedure. Secondly, I have decided this because termination of the 2010 Agreements will result in an appreciable and unmatched shift of the parties' bargaining position in the favour of the MFB. There are insufficient findings stemming from my other consideration of the circumstances, effects or views that would suggest the findings I have made about the effects on employees and the UFU are, in context, lesser factors to be taken account of in my consideration of whether it is appropriate to terminate the 2010 Agreements.
>
> [314] I therefore consider that because of these two factors taken together, it is not appropriate to terminate the 2010 Agreements.

CFA EBA

Mr Marshall submitted that the compliance review undertaken by VEOHRC (see section 2.2.3) was an opinion rather than a review undertaken by a body such as the FWC.

Mr Marshall also submitted that the cost of the 'UFU proposal' was substantially less than the amount publicly claimed by Minister Garrett and the CFA.

MFB EBA

In relation to the FWC decision on the MFB EBA (see section 3.4.4), Mr Marshall submitted that concerns held by the MFB in relation to whether some terms were unlawful or undermined safety obligations were unfounded. He also stated that concerns that the MFB EBA lacked meaningful diversity obligations were without factual basis. Mr Marshall claimed that using the consult-and-agree and diversity clauses, the number of women career firefighters has doubled since 2016, pointing to 'comparable data' from international fire services such as in New Zealand and USA. Mr Marshall noted that the MFB EBA was certified in accordance with the FW Act framework and the relevant legislative parameters.

UFU's employment of a crossbench MP's relative

In response to the draft report, Mr Marshall disagreed with the way IBAC categorised the employment of the MP's relative. Mr Marshall claimed that the MP's relative provided a skillset that the UFU once had but not replaced with hiring of additional staff.

Mr Marshall emphasised the fact that the crossbench MP had already decided to vote in favour of the Bill when the UFU offered their relative employment. Mr Marshall referred to text messages to this effect.

Obligations of MFB executives to keep the Minister informed

Mr Marshall submitted that it was appropriate for him to share information with Minister Neville regarding the MFB CEO B engaging consultants on MFB operational matters (see section 3.5.4). Mr Marshall noted that s 8 of the *Metropolitan Fire Brigades Act 1958* (Vic) provides for accountability to the Minister, and that Minister Neville had a right to be informed of significant operational matters that impacted on the delivery of a public service within her portfolio.

IBAC notes that accountability to the Minister is an obligation imposed on MFB executives, not an obligation that applies to the UFU or Mr Marshall, and it does not empower the UFU or Mr Marshall to share information they perceive should have been shared. In IBAC's view it was not appropriate for Mr Marshall or the UFU to share information with a Minister on the basis that the MFB CEO B may have had an obligation to share that information.

Submissions in relation to Minister Garrett

In his response to a draft of this report, Mr Marshall asked IBAC to treat Minister Garrett's evidence in relation to Mr Marshall's conduct, leadership and the UFU's affairs with considerable caution.

Mr Marshall disputed Minister Garrett's evidence about her experiences dealing with Mr Marshall (see section 4.2.1, 'Failure to address inappropriate behaviour'). Mr Marshall submitted that text messages from Mr Marshall to Minister Garrett in April 2016 had been reviewed by the UFU. Mr Marshall stated that this review found that these text messages were 'direct and to the point' but 'can in no way' be characterised as abusive.

Mr Marshall also disputed the cause of Minister Garrett's resignation in June 2016.

Mr Marshall provided IBAC with a statutory declaration dated 22 September 2016 from a UFU member relating to events between that member and Minister Garrett in or around January 2015 and October 2015. According to the statutory declaration, Minister Garrett was actively trying to displace Mr Marshall as Secretary of the UFU. The statutory declaration also contained an allegation that Minister Garrett had been verbally abusive to that member for maintaining loyalty to Mr Marshall.

Mr Marshall also referred to a complaint he made to IBAC on 23 July 2018 in relation to Minister Garrett, which was dismissed by IBAC.

IBAC acknowledges that the professional relationship between Minister Garrett and Mr Marshall had broken down and that this played out in the media.

As outlined in the introduction to Appendix A, IBAC acknowledges that due to Ms Garrett's passing, she cannot respond, refute or defend aspects of responses that IBAC received in accordance with the natural justice process for this report.

Procedural fairness

Mr Marshall's submission included comments in relation to procedural fairness. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions*.

Unauthorised disclosures and reputational harm

In response to a draft of this report, Mr Marshall referred to the unauthorised publication of information to journalists and media concerning Operation Richmond. Mr Marshall criticised IBAC for what he considered to be a failure to properly address these unauthorised disclosures. Mr Marshall claimed that his reputation and welfare had been significantly prejudiced. Mr Marshall referred to his long and distinguished career in the fire services and as a trade union leader. He contended that his professional legacy has been gravely damaged by the public association of his name with allegations of 'corruption' and what he considers to be inaccurate assertions. Finally, Mr Marshall referred to the fact that no findings of corrupt conduct were made regarding Operation Richmond.

IBAC adopted a range of measures to prevent the unauthorised disclosure of information regarding Operation Richmond. IBAC investigated all instances of unauthorised disclosure and took immediate legal action to successfully prevent the premature publication of Operation Richmond draft special report content, and to protect the welfare of individuals involved.

The Hon Lisa Neville MP

Employment offer to crossbench MP's relative

In her response to a draft of this report, Ms Neville stressed that she had no involvement in the employment offer made by the UFU to the crossbench MP's relative (see section 3.5.3) and that, at the time she was made aware of the employment offer, she knew that the crossbench MP already intended, absent any inducements, to vote in favour of the FSLAR Bill 2019.

Mr Marshall's level of access to Ms Neville

In her response, Ms Neville disputed that Mr Marshall's level of access to her was exceptional. Ms Neville submitted that Mr Marshall's level of access was comparable to many other stakeholders from community, business and other interest groups and associations.

Engagement approach to Mr Marshall

Ms Neville submitted that managing stakeholders – including Mr Marshall and the UFU – was intrinsic to her role as Minister and it was Mr Marshall's role to strongly advocate for UFU members. Ms Neville submitted that the UFU were 'critical stakeholders' in the establishment of the FRV and acknowledged that she built rapport and trust with Mr Marshall by engaging in banter, but that did not mean that she was accepting of or influenced by his opinions. Ms Neville considered that IBAC's discussion, opinion and criticism of her stakeholder management undermined IBAC's decision to make no adverse findings in respect of Ms Neville.

Further, Ms Neville submitted that IBAC is unable to make a finding that she poorly managed her relationship with Mr Marshall and the UFU as it is outside of IBAC's jurisdiction. Ms Neville asserted that such a finding is not founded in IBAC's statutory remit to investigate conduct amounting to corrupt conduct, which requires the presence of a serious relevant offence.

As outlined in section 1.1, IBAC may take certain actions at the end of an investigation. One of those actions is to publish a special report relating to the performance of its duties and functions. As such, IBAC respectfully rejects Ms Neville's contention that commenting on her conduct in this report is outside of its jurisdiction.

In her response to IBAC, Ms Neville referred to instances where she had to call Mr Marshall to account for his behaviour and Ms Neville considers this illustrates a minister who was 'aware of her obligations to her stakeholders, provided access to all stakeholders and was strong and independent, able to allow for the difficulties and failings of her constituents' and that, in light of this, the suggestion that she would be open to influence was insulting and fails to consider the evidence she gave to IBAC on this point.

In her response to section 4.1 of this report, Ms Neville was critical of IBAC's conclusion that Mr Marshall contacting her one-on-one limited her ability to acquit her responsibility under the Ministerial Code to observe fairness in making official decisions. Ms Neville noted that if Mr Marshall 'raised anything of substance' during a discussion, she would seek a briefing on that issue to make sure she received a summary of different options and advice. Ms Neville also highlighted that how a minister chooses to obtain opinions and seeks advice is at their discretion to manage.

Ms Neville noted that it was unclear to her why IBAC considers that differing views need to be heard in the same meeting, where such a limitation is not something that is contemplated by the Ministerial Code. Ms Neville also submitted that it would be impractical for a minister to have staff sit in on all telephone calls with stakeholders. Ms Neville disagrees with the contention that her conversations need to be made public, given her decisions are ultimately open to public scrutiny.

Appointment of FRV Commissioner

Ms Neville's response also submitted that she was not influenced by Mr Marshall in her decision to appoint the Canadian Fire Chief to the role of FRV Commissioner and rejected the draft report's conclusion that she was at risk of improper influence by Mr Marshall (see section 3.5.4).

In her response, Ms Neville noted that she was aware of Mr Marshall's preference for the Canadian Fire Chief due to his public comments, however, she acknowledged that Mr Marshall spoke with her to share these views. Ms Neville asserted that she wanted the best candidate to be appointed as FRV Commissioner and she formed the view to select the Canadian Fire Chief independently from Mr Marshall. Ms Neville advised that, to her knowledge, Mr Marshall was not aware of the identity of the second-ranked candidate. Ms Neville asserted that this evidences that he was not consulted about the candidates for the role of FRV Commissioner.

Ms Neville submitted that her public statement made in December 2019 during the announcement of the new FRV Commissioner, that she did not consult with the union, 'was true and there is no basis to find otherwise'. Ms Neville explained that, to her understanding, consultation with the union would have involved asking Mr Marshall for his views on candidates. On this basis, Ms Neville maintains that she did not consult with Mr Marshall.

Ms Neville submitted that the FRV Commissioner was appointed based on merit. Ms Neville provided additional context about the appointment of the FRV Commissioner, noting she was only involved in the interviews of the final two candidates, selected as part of a shortlisting process, alongside the Secretary of DPC. Ms Neville submitted that she considered the ability of the candidates to work with unions and other stakeholders given it was a key part of the FRV Commissioner's role.

In her response, Ms Neville requested the removal of a comment made by MFB CEO B in evidence to IBAC about their experience interacting with Minister Neville when they were appointed to the emergency services portfolio (see section 3.5.4 'Commencement of the MFB CEO'). Ms Neville stated that the inclusion of this comment 'enables IBAC to be the mouthpiece for essentially an unsuccessful candidate who may feel resentful or malicious towards the Minister'.

Ms Neville asserted that the lawfully intercepted phone calls detailed in the report between herself and Mr Marshall (see section 3.5.4 'Mr Marshall's strategy to influence the selection of the new FRV Commissioner'), show nothing more than Mr Marshall conveying his views to Ms Neville. She further submitted that they are a 'good example' of how she listened to a stakeholder, giving them time to voice their opinions. In her view they do not suggest she was influenced by Mr Marshall.

In response to IBAC's finding that Ms Neville 'came to the conclusion that MFB CEO B was not suitable to lead the FRV and then shared her unfavourable views with Mr Marshall in private' (see section 3.5.2 'Minister Neville's decision to not appoint MFB CEO B'), Ms Neville agreed that she considered that MFB CEO B was not suitable for the role of FRV Commissioner. However, Ms Neville noted that, by the time she shared her views about MFB CEO B with Mr Marshall they had already stepped down and indicated they would not be applying for a role leading FRV.

As set out in section 3.5.4, IBAC's evidence indicates that Ms Neville and Mr Marshall discussed their opinions about MFB CEO B on 12 June 2019, a month before that CEO's resignation.

Mr Greg Sword AM

In his response to the draft report, Mr Sword provided the following comment:

> Having had the opportunity to review IBACs findings concerning me I wish that it be known that in my role as a board member of the MFB that at all times I acted in the best interests of the MFB and did at all times do my very best to achieve positive outcomes for the MFB. This includes when I met with Mr Marshall on 28 May 2019.

People referred to in the report and responses to the draft report

CFA Board appointee A

In their response to the draft report, CFA Board appointee A strongly rejected any suggestion of wrongdoing or improper conduct on their part. CFA Board appointee A stated that the appointments to the CFA Board in 2016 (see section 3.3.3) were based on merit rather than political criteria, with each CFA Board member bringing 'deep and relevant skills and experience' to the CFA Board. In support of this statement, CFA Board appointee A outlined their own relevant experience, qualifications and expertise.

CFA Board appointee A noted that the appointments to the CFA Board took place at a time when the CFA was operating in a difficult governance environment and was faced with a range of challenging and high profile issues, including the contamination and closure of the Fiskville training centre. They stated that this context gave rise to an urgent need to appoint a board with the skills and expertise to deal with the various governance, financial, technical and industrial relations issues faced by the CFA.

In regard to their conduct on the board, CFA Board appointee A said that they took an evidence-based approach to the CFA EBA deliberations, that they would 'not be told how to vote on the EBA' and that they were prepared to resign if they were directed by the responsible minister to progress the CFA EBA against their own independent assessment. They further submitted that if the government wanted a 'yes' person, they would not be it.

CFA Board appointee B

In their response to the draft report, CFA Board appointee B submitted that the new board appointees could either allow the CFA EBA proposal to proceed, or resign from the board.

CFA Board appointee B also noted their experience in governance and emergency management. They suggested that this unique skillset might explain some of the reasons why they were approached to be appointed to the CFA Board.

CFA Chair

In their response to the draft report, the then-newly appointed CFA Chair submitted that the draft report suggested they were appointed to the CFA Board because they were more likely to approve the proposed agreement than the previous board, irrespective of its legality and impact on the CFA. The CFA Chair rejected this characterisation and submitted that given their professional background there can be no suggestion they lacked the requisite skill to deal with the dispute.

The CFA Chair submitted that the draft report does not sufficiently distinguish between the motives of the government for appointing them to the position (about which they cannot comment) and their personal motivation for accepting the appointment. The CFA Chair submitted that they accepted the appointment because they believed they were suitable for the role and could use their skills and experience to resolve the complex industrial/organisational dispute between the CFA, its paid firefighters and its volunteers. The CFA Chair further submitted they 'acted in good faith in an attempt to resolve a very difficult dispute'.

Crossbench MP

In their response to a draft of this report, the crossbench MP made several comments in relation to the employment offer made to their relative by Mr Marshall (detailed in section 3.5.3). The MP submitted that they had always maintained that it was their understanding that their relative would be applying for a position, and that they would have to be successful in an interview against other candidates. The crossbench MP stated that it was their understanding that the position was of a casual or part-time nature and would be for a period of approximately ten to 12 days. Further, the MP noted that the relative was paid commensurate with an appropriate award for the work and qualifications, to the value of approximately two thousand dollars.

Minister Jennings' Parliamentary Secretary

In their response to the draft report, Minister Jennings' Parliamentary Secretary stated that during their time as an MP, they acted with good intent and integrity when advocating for stakeholders and fulfilling their responsibilities and rejected any inference to the contrary.

Public bodies named or referred to in the report and responses to the draft report

Department of Justice and Regulation (now Department of Justice and Community Safety)

In its response to the draft report, DJCS noted that individuals referred to in this report are no longer employed or appointed to roles in the justice portfolio. The response also noted that the Emergency Management Commissioner in place during the period of IBAC's investigation is no longer in this role.

DJCS's response also stated that appointments to FRV and the CFA Board are made by the Governor in Council and are subject to the Victorian Government *Appointment and Remuneration Guidelines*. DJCS noted that these guidelines aim to ensure appointments adhere to good governance principles and reflect the diversity of the community.

Department of Premier and Cabinet

In its response to the draft report, DPC noted that all DPC staff adversely mentioned in the report are no longer employed with DPC.

DPC also provided comments in relation to reasonable and lawful employment directions. These comments are reflected earlier in the appendix under *Matters raised across multiple submissions*.

Emergency Management Victoria

In response to the draft report, EMV noted that individuals referred to in the report, including the former Emergency Management Commissioner, are no longer employed or appointed to roles in EMV or the emergency management sector.

EMV noted that EBA negotiations are not part of the accountabilities or legislative expectations of the role of the Emergency Management Commissioner, and that the current Emergency Management Commissioner has not had any involvement in current EBA negotiations.

EMV stated that appointments to the CFA Board (and formerly the MFB Board) are made by the Governor in Council, on the recommendation of the Minister for Emergency Services, and are subject to the Victorian Government *Appointment and Remuneration Guidelines*. EMV's response noted that EMV plays a role in facilitating board appointments for the CFA, which may involve coordinating competitive recruitment processes and performance assessment of potential candidates, with advice and recommendations provided through a briefing to the Minister for Emergency Services. EMV noted that the Emergency Management Commissioner is not involved in the recommendation process.

EMV's response noted that there is no board of directors under the FRV model. The response noted that the appointments of the FRV Commissioner and Deputy Commissioners are made by the Governor in Council on the recommendation of the Minister for Emergency Services, and are subject to the *Appointment and Remuneration Guidelines*.

Appendix B: Additional submissions

Submission from the former Fair Work Commissioner

The Fair Work Commissioner in place during the events of Operation Richmond provided a submission to IBAC requesting clarification of various matters in the report. These matters are summarised below.

Final Recommendations

In relation to the report's comments about the Final Recommendation issued by the FWC (see section 3.3.2, 'FWC's Final Recommendation'), the Fair Work Commissioner noted that the full context of their remarks is set out at paragraph 4 of the Final Recommendation.

Paragraph 4 of the Final Recommendation concerned the bargaining approach adopted by the CFA and UFU throughout the formal negotiations. It noted that while the CFA had recently raised concerns about the proposed outcomes, it was difficult 'to reconcile this against previous decisions reached'. The paragraph noted that the UFU's claim had remained consistent throughout the bargaining process and included a remark from the Fair Work Commissioner that, in the circumstances, they felt somewhat constrained in the matters that they were able to properly deal with, 'given the good faith bargaining regime under the Act'.

Conciliation processes and role of the conciliator

In relation to the report's comments about the communications that occurred during FWC conciliations (see section 3.2.2, 'Confidential and inappropriate communications during the conciliations') the Fair Work Commissioner noted that a conciliation process at the FWC does not function in the same manner as a judicial proceeding. The Fair Work Commissioner noted that, in contrast to determinative processes, the process of conciliation under the FW Act generally involves speaking to parties in private and that parties may provide information that they don't want shared. The Fair Work Commissioner noted that disclosure of any communication to the officer conducting the conciliation is a matter for the parties to the conciliation, and not within the purview of the conciliator to disclose the communication unless authorised by the party making the disclosure.

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